

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD
BORD OIDEACHAIS AGUS OILIÚNA CHILL DARA AGUS CHILL MHANTÁIN

Financial Statements For The Year Ended 31st December 2015

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Index to the Financial Statements for the Year Ended 31st December 2015

	Page
Statement of Board Responsibilities	3
Statement on Internal Control	4
Comptroller and Auditor General Audit Report	5
Activities and Pay Costs	6
Accounting Policies	7
Operating Account	8
Statement of Current Assets and Current Liabilities	9
Notes to the Financial Statements	10-24

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Statement of Board Responsibilities

Kildare and Wicklow Education and Training Board was established on 1 July 2013 under the provisions of the Education and Training Boards Act 2013.

Section 51 of that Act requires the ETB to keep in such form and in respect of such accounting periods as may be approved by the Minister for Education and Skills with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, all proper and usual accounts of the monies received or expended by it.

In preparing those accounts, the Board is required to:

- (a) apply the standard accounting policies for the preparation of ETB financial statements
- (b) make judgements and estimates that are reasonable and prudent
- (c) disclose and explain any material departures from the standard accounting policies

The Board is responsible for keeping proper books of account which disclose with reasonable accuracy at any time the financial position of the Board and which enable it to ensure that the Financial Statements comply with section 51 of the Education and Training Boards Act 2013.

The Board is also responsible for safeguarding its assets and for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Chairman

Mr. Noel Merrick
Mr. Noel Merrick

Date:

18/12/18

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Statement on Internal Control

2015

Revised November 2018

Kildare and Wicklow Education and Training Board (KWETB) was established on 1 July 2013 under the provisions of the Education and Training Boards Act 2013. On that date, KWETB took over the assets, liabilities and functions of the former County VECs of Kildare and Wicklow.

The Code of Governance for ETBs is set out in Circular Letter 18/2015, which was issued by the Department of Education and Skills to all ETBs on 16th March 2015. The Code of Governance was adopted by KWETB at its meeting of 12 May 2015.

Prior to the ETB Code of Governance issued in March 2015, KWETB operated under the provisions of the Code of Governance for VECs issued in 2005.

The Audit and Finance Sub-Committees previously in place in the individual VECs were amalgamated and continued to operate until new Committees were formed following the local elections in June 2014 and the adoption of the new Code of Practice. There were no Audit or Finance Committees in place between June 2014 and May 2015 as they were not established during this period. The new Audit and Finance Committees were established on 12 May 2015.

The Audit Committee met three times between October and December 2015. The Committee did not meet between May and October as ETB members had to be selected and expressions of interest sought from external members. Interviews then took place and those members were adopted by the Board.

The Finance Committee met three times between October and December 2015. The Committee did not meet between May and October as ETB members had to be selected and expressions of interest sought from external members. Interviews were held, further expressions sought and external member selection adopted at September 2015 meeting.

As Chairperson of KWETB, I acknowledge the responsibility of the Board for ensuring that an efficient and effective system of internal control is maintained and operated. The system can only provide reasonable and not absolute assurance that assets are safeguarded, transactions are authorised and properly recorded, and that material errors or irregularities are either prevented or would be detected in a timely period.

Key Control Procedures

The Board has taken steps to ensure an appropriate control environment by:

- Clearly identifying management and staff responsibilities.
- Establishing procedures for reporting control failures and ensuring appropriate action.
- Establishing procedures for identifying and evaluating all risks which could prevent KWETB from achieving its objectives.

The system of internal control operated in KWETB is based on:

- Detailed administrative procedures
- Segregation of duties
- Specific authorisations
- Internal checks
- Monthly management review of reports outlining the actual and budgeted results of programmes operated by KWETB.

The Board's monitoring and review of the effectiveness of the system of internal control is informed by the:

- Recommendations made by the Office of the Comptroller and Auditor General in management letters or other reports.
- Chief Executive, who has responsibility for the control framework.
- Work of the Audit Committee, which considers internal audit reports, reports of the C&AG and reports to the Board regarding whether the Chief Executive is, in the internal auditor's opinion, operating adequate and appropriate systems of internal control.

An internal audit service is provided by the Internal Audit Unit (IAU-ETB). An Internal audit review on Receipts was carried out in January 2014 and the report was received in February 2015. Internal audit reviews on Adult Literacy and Community Education were conducted in January 2015 and the report received in September 2015. An internal audit review on Teaching and Staffing allocations and Co-operation Hours was conducted in December 2015 and the report received in May 2017. For all of the above reports the IAU concluded that KWETB has adequate systems of internal control in place in the areas audited. An Internal audit review into Information Technology was carried out in August 2017 and the draft report was received in August 2018. The IAU concluded that the ETB did not have an adequate system of internal control in place in the area audited. An Internal Audit review on Youthreach was carried out in September 2018 and we await the report.

Risk Management

There was no risk function or approved risk register in place in KWETB during 2015. The risk register was approved by the Audit Committee in August 2016 and a risk function was implemented by KWETB Executive in December 2016. A Risk Policy has been developed and adopted by the Board in May 2018 and a Corporate Risk Register and a Schools Risk Register have been developed by KWETB Executive in conjunction with IPB.

Specific Disclosures in relation to the audit of the 2015 Annual Financial Statements

The audit of the 2015 financial statements commenced in January 2017. While on-site fieldwork was completed in March 2017, audit enquiries were ongoing up to June 2017.

In June 2017, the Office of the Comptroller and Auditor General formally requested further information from the Chief Executive regarding matters that had been noted during the audit process, including to supply procurement documentation that was absent on files received and evidence of compliance or reasons for non-compliance with EU, National and Department of Education and Skills procurement rules and guidelines; property cost overruns - including acceleration of a school building contract, a high court settlement and the circumstances surrounding the relocation of modular school accommodation and

procurement of same; and propriety matters related to property rental and its subsequent sub-let to another party, related party transactions in respect of certain companies, use and disposal of motor vehicles, and expenses incurred by credit card on hotel facilities and subsistence claims.

In July 2017, the Office of the Comptroller and Auditor General received a response from the Chief Executive to the formal information request. However, the responses were, in some cases incomplete. While some further documentation was provided at a later date, a number of the responses remained incomplete.

Also in July 2017, the Office of the Comptroller and Auditor General provided a copy of the formal information request to the Chair and Vice-Chair of KWETB and to the Chair of the KWETB's Audit Committee.

Later in July 2017, the Office of the Comptroller and Auditor General brought the issues to the attention of the Secretary General of the Department of Education and Skills. The Department corresponded with the Chief Executive of KWETB and sought further responses to the issues, along with other matters that had come to his attention. Responses were provided to the Secretary General in August and September 2017.

The Secretary General, having considered the issues raised by the Office of the Comptroller and Auditor General, as well as other matters, and the responses submitted to him by the Chief Executive of KWETB, decided to refer the matters to the Minister for Education and Skills. On 4 October 2017, the Minister decided to appoint an Investigator to carry out a statutory examination under Section 40 of the Education and Training Boards Act 2013 into the performance by Kildare and Wicklow ETB of its functions - particularly in relation to public procurement, usage and disposal of assets and propriety matters.

The Investigator's terms of reference were:

- To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided and to establish the factual position, with particular reference to the following matters:
 - i. Compliance with Department procedures in relation to the procurement and delivery of various building projects
 - ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017
 - iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit
 - iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same
 - v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use

- vi. The operation and use of pool vehicles and business case for
 - vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB
 - viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit
 - ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit
 - x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.
- The Investigator may include any other issue that he considers to be a matter of public interest and he may examine matters from any earlier period.

The Investigator completed his report in March 2018 and submitted it to the Secretary General in the Department of Education and Skills. The report was published on September 12th 2018. The key findings were in the areas of compliance in relation to building works and in particular procurement, issues around the delegation of functions, conflicts of interest, asset disposal and leasing, operation and use of pool vehicles, sales of motor vehicles and a number of other matters relating to building contracts which have been referred to the Gardaí for investigation.

The report also noted the absence of clear business cases for many building and development projects.*

Following the publication of the Investigator's Report a comprehensive action plan has been created and is being implemented by KWETB Executive. This was in response to the findings of the Investigator's Report and associated recommendations and Ministerial directions. Many were in progress during 2017 and 2018. The actions include:

- Review of KWETB internal control process and mechanisms.
- Irish Public Bodies are in the process of providing expertise and guidance on risk management.
- Engaging external experts in corporate governance gap analysis and services to the Executive and the Board.
- Preparing a schedule of revised authorisation limits for procurement and payments.
- Preparation of a property register that includes all leases and licences and a policy will be brought before the Board.
- Development of Memorandum of Understanding for Project Design Teams which will clarify the roles, responsibilities and reporting mechanisms of all parties involved in capital projects.
- In collaboration with the IPA, develop and embed a robust corporate Governance framework for KWETB.
- In collaboration with the IPA, provide guidance and support to the Audit Committee covering relevant areas including duties, responsibilities, functions, terms of reference, committee process and reporting, internal and external audit liaison, management assurance arrangements, relationships with the senior management team and overall committee effectiveness.

- In collaboration with the IPA, provide guidance and support to the Finance Committee covering relevant areas including duties, responsibilities, functions, terms of reference, committee process and reporting, internal and external audit liaison, management assurance arrangements, relationships with the senior management team and overall committee effectiveness.
- In collaboration with the IPA providing support and guidance in relation to the adoption and implementation of codes of conduct and ethical and professional obligations, processes and procedures in relation to declarations of interest, protected disclosures, reporting obligations to Standard in Public Office and legislative reforms proposed in this area and more generally processes in the areas of ethics and behaviour.
- In collaboration with the IPA the establishment of a process of self-evaluation to gauge the effectiveness of the Board and the Executive Leadership.
- Reviewed existing practices and procedures and implemented new ETBI Procurement Policy.
- Carry out a comprehensive procurement training needs analysis to identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team including having a KWETB representative on ETBI procurement national forum.
- Clarify roles and responsibilities, including sign off authority in relation to procurement. This should include a shared and agreed process that would enable changes to delegated authority to take effect.
- Conduct a workshop with Finance and Procurement teams to identify issues, clarify expectations and identify actions to enhance existing practices.
- Compile a Procurement Plan.
- Introduce best-practice document management and policy approval practices and conventions including revision dates, by whom, promulgation, changes, distribution etc.
- In collaboration with the IPA, KWETB will ensure that the requirements of the Code of Practice for the Governance of ETB's in respect of the Board approval for 'the acquisition, development and disposal of land or any interests in land including buildings' are adhered to and recorded appropriately in Board minutes.
- KWETB has reviewed the use of company pool vehicles and disposed of same. The practice of using pool vehicles has been discontinued.
- Review and optimise Asset Management Systems and policies across KWETB.
- Review and implement policies and procedures on Delegated Responsibility, conflicts of interest and Protected Disclosures.
- The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer.
- Compile an OSD Resource Plan and a longterm OSD Workforce Plan.

The outcomes of the audit with regard to the specific disclosures in relation to the audit of the 2015 Annual Financial Statements are set out in the supplementary report attached to the Comptroller and Auditor General's audit certificate which he prepared under Section 7 of the Comptroller and Audit General (Amendment) Act 1993. Following this report these additional actions will be actioned immediately.

Controls over procurement and non-compliance with procurement rule/guidelines

There was no centralised system of procurement in KWETB. All capital projects are overseen by Corporate Services with functions split between two physical offices. OGP Frameworks are used by all Offices, schools and centres where applicable.

Tenders i.e. above €25,000 for Good and Services and €50,000 for Works are administered by the Head Offices in each county. Other smaller capital works and Non-capital goods and services are procured for by schools and centres. There is no register of contracts.

KWETB is committed to complying with relevant EU, National and Department of Education and Skills procurement rules and guidelines. However, during 2015, in addition to the procurement issues identified in the Investigator's report and the C&AG's supplementary report, KWETB estimated non-compliant procurement to be €940,287 and relates to the following: Transport - €401,543 and School Books €538, 744.

KWETB has adopted ETBI Procurement Policy and reviewed existing practices and procedures. The OGP ran a national tender for school books during 2017. KWETB have used this framework and ran a mini competition to appoint a single supplier of school books in 2018.

Accounting records

The system for recording financial transactions used by the majority of the former VECs is an out-dated single entry system that is not fit for purpose. KWETB requires a new fit for purpose integrated IT system. This has been requested numerous times and raised in national fora. This is a matter of concern for both the executive and audit committee of KWETB. Pending approval for a new system, KWETB will continue to work with the Department of Education and Skills and the Project Management Office regarding Finance Shared Services.

Delay in the submission of financial statements

KWETB submitted its 2015 draft Annual Financial Statements to the Office of the Comptroller and Auditor General on 12 December 2016. These Financial Statements were approved by the Finance Committee on 2nd June 2016 and again following a new template from Department of Education and Skills on 8th September 2016. The accounts were approved by the Board on 2nd August 2016 and again on 10th October 2016.

Annual Review of Controls

KWETB is committed to operating an efficient, effective and economic internal control system. A review of the effectiveness of the statement and systems on internal controls in respect of 2015 was undertaken by the Audit Committee in May 2016. This review based on a report on the Internal Controls of the KWETB from the Executive concluded that the procurement and risk management functions were at that time fit for purpose.

The Audit Committee again reviewed the Internal Controls at its meeting on 15 March 2018. The following items were brought to the attention of the Audit Committee by the Executive:

- KWETB is fully committed to complying with EU and national procurement regulations and guidelines. However, given the nature of the organisation, with decentralised purchasing in 22 post primary schools and 41 centres throughout Kildare and Wicklow, full compliance has and will remain a challenge for KWETB. There are instances where goods and services have been procured locally in line with KWETB procurement policy but the cumulative value across all sites exceeds the national tendering threshold. KWETB will initiate a review of these areas in 2018 and will endeavour to meet our obligations. Commencing December 2018 the IAU will conduct an internal review of procurement in KWETB.
- KWETB did not meet its obligation to provide annual pension statements to employees in 2015 in the Single Public Pension Scheme. Similar to other ETB's this will continue to be a major challenge for KWETB until we have an IT system capable of generating pension statements and until all of our historical manual records are collated and input onto this system.
- KWETB do not have an up to date Asset Register. As part of the draft OSD Strategy Statement for the period 2018 to 2020, KWETB has committed to having fixed asset stock takes completed by quarter one of 2019.
- The KWETB Annual Financial Statements for 2015 and 2016 were not submitted to the Office of the Comptroller and Auditor General before the statutory deadline of 1 April in the year following the year of account. The 2017 Annual Financial Statements were submitted to the Office of the Comptroller and Auditor General on 29 March 2018 and KWETB is committed to submitting all future annual financial statements on or before the statutory deadline.
- An area of particular note is the additional work required to bring our ICT systems up to the required standards. KWETB is currently reviewing the findings of a recent report on ICT conducted by the Internal Audit Unit – Education and Training Boards. KWETB will implement any recommendations possible in light of this review from the report.
- In February 2016 the Audit Committee requested that the IAU carry out a comprehensive audit of Procurement within KWETB. This request was not approved by the IAU as part of its overall audit workplan for the ETB sector, and the response was considered by the Audit Committee at its meeting in May 2016. This review will now commence in December 2018. The lack of defined financial resources for the KWETB Audit Committee limits its capacity to initiate reviews not available through the IAU-ETBs. This issue of resources will be addressed in due course as part of the IPA guidance and support on the future role and function of the Audit Committee within KWETB.

The Audit Committee of the KWETB did not deal with any governance issues that predated its establishment and operation in October 2015. However, the Audit Committee also noted that an additional review of internal controls may be necessary on foot of the publication of the Section 40 report and that some changes to internal controls may also be necessary regarding our work with external suppliers of goods and services and external agencies.

Signed: *Noel Merrick*
 Noel Merrick
 Chairperson

Date: 18/12/2018

*The full Investigator's report also known as 'TheThorn Report' is available at
<https://www.education.ie/en/Publications/Education-Reports/investigation-kwetb.pdf>



Ard Reachtaire Cuntas agus Ciste Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas Kildare and Wicklow Education and Training Board

Opinion on financial statements

I have audited the financial statements of Kildare and Wicklow Education and Training Board for the year ending 31 December 2015 as required under the provisions of Education and Training Boards Act 2013. The financial statements comprise

- the statement of accounting policies
- the operating statement
- the statement of current assets and current liabilities and
- the related notes.

In my opinion,

- the financial statements properly present the income and expenditure of the Board for 2015 and the state of affairs of the Board at 31 December 2015; and
- the financial statements are in accordance with the accounting policies laid down by the Minister for Education and Skills.

Basis of opinion

I conducted my audit of the financial statements in accordance with the International Standards on Auditing (ISAs) as promulgated by the International Organisation of Supreme Audit Institutions. My responsibilities under those standards are described in the appendix to this report. I am independent of Kildare and Wicklow Education and Training Board and have fulfilled my other ethical responsibilities in accordance with the standards.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Report on information other than the financial statements, and on other matters

The Board has presented certain other information together with the financial statements. This comprises the statement of Board responsibilities and the statement on internal control. My responsibilities to report in relation to such information, and on certain other matters upon which I report by exception, are described in the appendix to this report.

Lapses in controls over procurement of capital projects and certain other expenses

I draw attention to the attached report prepared by me pursuant to Section 7(4) of the Comptroller and Auditor General (Amendment) Act 1993 following the audit of the accounts of the Board for the year ended 31 December 2015. The report deals with lapses in control over the use of the resources of Kildare and Wicklow Education and Training Board with respect to the procurement of capital projects and certain other expenses.

Non compliant procurement of goods and services

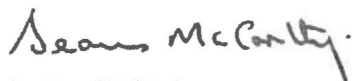
The statement on internal control discloses that there was a material level of non-compliance with national procurement rules in respect of goods and services procured in 2015, and the steps planned to deal with this.

ICT environment

The statement on internal control draws attention to the significant organisational challenges and potential control weaknesses of having an out-dated financial management system that is not fit for purpose. The Board expects this to be addressed by the introduction of a financial management shared service across the education and training board sector.

Adequacy of financial resources

The statement on internal control discloses that the audit committee of Kildare and Wicklow Education and Training Board lacks defined resources, which limits its ability to initiate reviews. It is expected that this issue will be addressed in due course as part of a review on the future role and function of the audit committee within Kildare and Wicklow Education and Training Board.



Seamus McCarthy
Comptroller and Auditor General

24 December 2018

Appendix to the report

Responsibilities of Board Members

As detailed in the statement of Board responsibilities, the Board members are responsible for

- the preparation of the financial statements in the form prescribed under section 51 of the Education and Training Boards Act 2013
- the keeping of proper books of account which disclose with reasonable accuracy at any time the financial position of the Board
- safeguarding the Board's assets and taking reasonable steps for the prevention and detection of fraud and other irregularities.

Responsibilities of the Comptroller and Auditor General

I am required under the Education and Training Boards Act 2013 to audit the financial statements of Kildare and Wicklow Education and Training Board and to report thereon to the Houses of the Oireachtas.

My objective in carrying out the audit is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement due to fraud or error. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with the ISAs, I exercise professional judgment and maintain professional scepticism throughout the audit. In doing so,

- I identify and assess the risks of material misstatement of the financial statements whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- I obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls.
- I evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures.
- I conclude whether the financial statements properly present the income and expenditure of the Board and whether the statement of balances, as represented by the statement of current assets and current liabilities presents the state of affairs of the Board.

- I evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Information other than the financial statements

My opinion on the financial statements does not cover the other information presented with those statements, and I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, I am required under the ISAs to read the other information presented and, in doing so, consider whether the other information is materially inconsistent with the financial statements or with knowledge obtained during the audit, or if it otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

Reporting on other matters

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation. I report if there are material matters relating to the manner in which public business has been conducted.

I seek to obtain evidence about the regularity of financial transactions in the course of audit. I report if there is any material instance where public money has not been applied for the purposes intended or where transactions did not conform to the authorities governing them.

I also report by exception if, in my opinion,

- I have not received all the information and explanations I required for my audit, or
- the accounting records were not sufficient to permit the financial statements to be readily and properly audited, or
- the financial statements are not in agreement with the accounting records.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Financial Statements - Year Ended 31st December 2015

Activities and Pay Costs

1 Main Activity

Kildare and Wicklow Education and Training Board provides Education and Training throughout counties Kildare and Wicklow as set out below :

Service	No. Locations	No. Participants
Second Level & Post Leaving Cert.	22	12,236
Further Education	18	8,939
Training	26	323
Part-time / Night Classes	6	1,570

2 Other Services

The Board also acts as an Agent and runs Self - financing Projects.

Agency work involves running a programme on behalf of another organisation according to agreed criteria and the Board is reimbursed its cost.

Self - financing Projects are programmes run under the complete control of the Board either for the Board or other organisations.

3 Pay Costs

Pay is the principal cost for the Board and the following table indicates the range and amount :

Pay Range* €	Number of Employees	Cost in 2015 €
0 - 59,999	2,042	42,320,677
60,000 - 69,999	257	16,728,246
70,000 - 79,999	113	8,272,334
80,000 - 89,999	22	1,883,728
90,000 - 99,999	10	938,375
100,000 - 109,999	19	1,987,413
Total	2,463	72,130,773

*Pay ranges do include employers' PRSI.

The ETB does not make pension contributions in respect of employees

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Establishment of the Education and Training Board and the Accounting Policies of the Financial Statements for the Year Ended 31st December 2015

1. Establishment of the Education and Training Board

Kildare and Wicklow Education and Training Board was established on 1 July 2013. Counties Kildare and Wicklow Vocational Education Committees (VEC) were dissolved on 30 June 2013 and all assets, liabilities and staff of the VEC's transferred to the ETB on a going concern basis. Details of the assets and liabilities transferred are set out in note 22 to these financial statements.

SOLAS was established on 27 October 2013 and all functions, operations, assets and liabilities remaining with FAS, which was dissolved on 26 October 2013, transferred to SOLAS.

The functions of the ETB are set out in section 10 of the Education and Training Boards Act 2013.

2. Significant Accounting Policies

(a) Basis of Presentation

The financial statements are presented in the form approved by the Minister for Education and Skills with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform. They consist of a Statement of Accounting Policies, an Operating Account, a Statement of Current Assets and Current liabilities and notes to the financial statements. Where necessary the comparative figure for the previous year has been restated on the same basis as those of the current year.

(b) Basis of Preparation

The Operating Account presents Receipts and Payments by Programme Grouping and the resultant Cash Surplus/(Deficit) is adjusted for debtor and creditor movements to determine the overall result for the period on an accrual basis.

The Statement of Current Assets and Current Liabilities is prepared on the accruals basis by determining state grant and other funder balances at amounts that reflect the related expenditure incurred and in accordance with the funding rules.

Third Party Debtors are included in Current Assets. Pay and Expense Liabilities are included in Current Liabilities.

(c) Tangible fixed assets

All assets purchased including land and buildings, fixtures and fittings and training equipment are charged to expenditure in the year of purchase. State grants to fund the purchase of tangible fixed assets are taken to income in the same year.

(d) Stocks

All consumable stocks are charged to expenditure when purchased.

(e) Superannuation

The pension entitlements of ETB staff, including those who transferred from SOLAS, are conferred under defined benefits schemes.

Superannuation deductions made from employees pay in respect of the schemes are retained by the ETB as part of agreed Exchequer funding, or paid over to the Department of Public Expenditure and Reform.

The ETB does not make any contributions towards the schemes.

These unfunded schemes are operated on a pay as you go basis with the annual pension entitlements being paid directly by the Department of Education and Skills

(f) Lease Rentals


All lease rentals are expensed as incurred.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

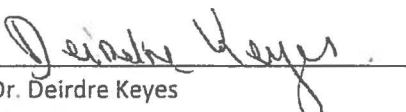
Operating Account For The Year Ended 31st December 2015

	Note	Year ended 31/12/2015 €	18 months ended 31/12/2014 €
RECEIPTS			
Schools & Head Office Grants	1	65,988,242	95,893,443
Further Education and Training Grants	2	21,076,084	23,869,414
Student Support Services Grants	3	567,140	2,273,618
Youth Services Grants	4	1,623,735	2,577,543
Agencies & Self-Financing Projects	5	7,746,303	13,601,353
Capital Grants	6	14,264,442	13,237,060
		<u>111,265,946</u>	<u>151,452,431</u>
PAYMENTS			
Schools & Head Office	7	65,887,820	96,581,970
Further Education and Training	8	19,078,223	25,366,021
Student Support Services	9	630,390	2,086,597
Youth Services	10	1,635,848	2,626,740
Agencies & Self-Financing Projects	5	7,733,879	13,265,235
Capital	6	14,189,210	13,956,549
		<u>109,155,370</u>	<u>153,883,112</u>
Cash Surplus/(Deficit) For Period		2,110,576	(2,430,681)
Movement in Other Net Current Assets	21	<u>(2,514,216)</u>	<u>1,400,971</u>
Accrual Revenue Surplus/(Deficit) For Period		(403,640)	(1,029,710)
Revenue Surplus/(Deficit) at 1 January		(2,337,720)	(1,308,010)
Revenue Surplus/(Deficit) at 31 December		<u>(2,741,360)</u>	<u>(2,337,720)</u>

Signed/Dated


Mr. Noel Merrick
Chairman

Date: 18/12/18


Dr. Deirdre Keyes
Chief Executive

Date: 18/12/2018

The notes on pages 10 to 24 form part of these financial statements

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Statement of Current Assets and Current Liabilities as at 31st December 2015


	Note	Year ended 31/12/2015 €	18 months ended 31/12/2014 €
Current Assets			
Recurrent State Grants	13	938,928	670,331
Capital State Grants	14	1,446,897	678,570
Other Recurrent Income	15	302,678	663,240
Third Party Debtors	16	-	525
Bank Balance		6,749,381	4,638,805
		<u>9,437,884</u>	<u>6,651,471</u>
Current Liabilities			
Recurrent State Grants	17	4,068,121	3,448,848
Capital State Grants	18	1,173,256	649,364
Other Recurrent Income	19	3,704,040	3,168,016
Pay & Expense liabilities	20	3,233,827	1,722,963
		<u>12,179,244</u>	<u>8,989,191</u>
Net Current Assets/(Liabilities)		<u>(2,741,360)</u>	<u>(2,337,720)</u>
Represented By			
Revenue Surplus/(Deficit)		<u>(2,741,360)</u>	<u>(2,337,720)</u>

Analysis of Revenue Surplus / (Deficit)

	Surplus (Deficit) 31/12/2015 €	Surplus (Deficit) in Year €	Surplus (Deficit) 31/12/2014 €
Programme			
Schools & Head Office	(2,704,118)	(387,685)	(2,316,433)
Exam Supervision	(30,214)	(9,717)	(20,497)
Others	(7,028)	(6,238)	(790)
	<u>(2,741,360)</u>	<u>(403,640)</u>	<u>(2,337,720)</u>

Signed /Dated


Mr. Noel Merrick - Chairman


Dr. Deirdre Keyes
Chief Executive

Date: 18/12/2015

18/12/2015

The notes on pages 10 to 24 form part of these financial statements

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

		Year Ended 31/12/2015	18 Months Ended 31/12/2014
1 Schools and Head Office Receipts			
PAY	FUNDER	€	€
Schools and Head Office Net Cash Grant	Dept. Education and Skills	55,994,478	82,669,685
Retained Superannuation Contributions	Staff	2,971,031	4,539,350
		<u>58,965,509</u>	<u>87,209,035</u>
NON PAY			
Schools and Head Office Net Cash Grant	Dept. Education and Skills	4,112,148	4,918,564
Tuition Fees	Parents/Students	355,874	631,099
Bank Interest	Bank of Ireland	14,903	119,201
Leaving Certificate Appeal	Dept. Education and Skills (via schools)	3,125	4,554
Repeat Leaving Cert fees	Students	-	508
Other	Irish Life	-	226
		<u>4,486,050</u>	<u>5,674,152</u>
ASSOCIATED PROGRAMMES			
School Support Services Fund	Dept. Education and Skills	1,092,592	1,397,664
Book Grant	Dept. Education and Skills	318,489	305,739
Examination Supervision	State Examinations Commission	289,646	532,209
DEIS Grant	Dept. Education and Skills	252,199	479,995
Revised Syllabus in Design and Comm	Dept. Education and Skills	230,000	-
Transition Year	Dept. Education and Skills	104,500	94,240
ICT Infrastructure Grant	Dept. Education and Skills	96,665	-
Leaving Cert Applied	Dept. Education and Skills	38,354	42,884
Junior Cert Schools Programme	Dept. Education and Skills/Professional Development		
	Service for Teachers	25,822	45,337
Others - 9 in total	Dept. Education and Skills	88,416	112,188
		<u>2,536,683</u>	<u>3,010,256</u>
		<u>65,988,242</u>	<u>95,893,443</u>

Programmes Grouped (Programme Receipt in 2015 < €20k)

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

			Year Ended	18 Months
			31/12/2015	Ended 31/12/2014
2 FURTHER EDUCATION AND TRAINING RECEIPTS				
Further Education	FUNDER	SPONSORING DEPARTMENT	€	€
VTOS	SOLAS	Dept. Education and Skills	7,861,592	11,656,308
Youthreach	SOLAS	Dept. Education and Skills	3,841,973	5,613,499
ALCES/SPIDAS/ITABE	SOLAS	Dept. Education and Skills	2,167,780	3,173,840
Back to Education Initiative	SOLAS	Dept. Education and Skills	1,125,620	1,699,631
Adult Education Guidance Service	SOLAS	Dept. Education and Skills	518,999	621,880
Operational Costs FE	SOLAS	Dept. Education and Skills	975,206	-
CETS Childcare Scheme	SOLAS	Dept. Education and Skills	292,133	228,706
PLC Capitation	SOLAS	Dept. Education and Skills	134,389	126,938
PLC Government Levy	Parents/Students		101,440	49,840
FETAC Assessment and Supervision	SOLAS	Dept. Education and Skills	125,223	256,561
Special Education Needs Initiative	SOLAS	Dept. Education and Skills	117,000	219,031
Youthreach Guidance Counselling	SOLAS	Dept. Education and Skills	42,915	94,943
DEIS Family Literacy	SOLAS	Dept. Education and Skills	19,250	43,102
CPD YR and VTOS	SOLAS	Dept. Education and Skills	12,755	40,877
Refugee Programme	SOLAS	Dept. Education and Skills	37,978	-
FETAC External Authentication	SOLAS	Dept. Education and Skills	49,000	-
STTC	SOLAS	Dept. Education and Skills	-	26,122
Quality Framework	SOLAS	Dept. Education and Skills	-	18,136
			17,423,253	23,869,414
* Training				
Specialist Training Providers (STP)	SOLAS	Dept. Education and Skills	1,020,449	-
Local Training Initiatives	SOLAS	Dept. Education and Skills	769,560	-
Bridging Foundation & Skills Training	SOLAS	Dept. Education and Skills	887,310	-
TC Staff & Operations	SOLAS	Dept. Education and Skills	157,446	-
Community Training Centres	SOLAS	Dept. Education and Skills	376,494	-
Traineeships	SOLAS	Dept. Education and Skills	356,581	-
Apprenticeship	SOLAS	Dept. Education and Skills	84,295	-
Other	Students		696	-
Total			3,652,831	-
Total			21,076,084	23,869,414
3 STUDENT SUPPORT SERVICES RECEIPTS				
Grants and Scholarships		Dept. Education and Skills	567,140	2,273,618
			567,140	2,273,618
4 YOUTH SERVICES RECEIPTS				
Regional Task Force		Dept. Health	559,167	858,939
Special Projects Youth-SPY		Dept. Children and Youth Affairs	258,135	324,625
Y.P.F.S.F. STREAM 2		Dept. Children and Youth Affairs	655,947	1,007,053
Youth Information		Dept. Children and Youth Affairs	-	72,571
Youth Work Act (Development Plan)		Dept. Children and Youth Affairs	59,820	122,188
Youth Club Grant (Sports Dept.)		Dept. Children and Youth Affairs	90,666	146,422
Youth Café		Pobal	-	45,745
			1,623,735	2,577,543

*In November 2015 the Training functions of Waterford Wexford ETB, Dublin Dunlaoghaire ETB and Longford Westmeath ETB that pertained to training activity within Counties Kildare and Wicklow were transferred to Kildare and Wicklow ETB.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

5 AGENCIES and SELF-FINANCING PROJECTS

AGENCIES			Year Ended 31/12/2015				18 Months To 31/12/2014	
Item	PROJECT NAME	Funder	RECEIPTS	PAYMENTS			RECEIPTS	PAYMENTS
				Pay	Non Pay	Total		
			€	€	€	€	€	€
1	School Completion Programme	Tusla	1,188,174	1,020,958	197,084	1,218,042	2,292,547	1,941,682
2	School Based Activities - Bank Accounts	Various	321,768	-	311,965	311,965	1,492,835	1,842,811
3	Music Generation	Music Generation Education and	468,613	302,331	36,897	339,228	772,985	691,393
4	Seconded Pay Recoupments	Skills/Tusla/Others	272,755	228,929	-	228,929	306,814	306,379
5	School Meals	Employment Affairs and Social Protection	215,134	-	214,840	214,840	278,552	307,463
6	Skills for Work	Dublin and Dunloaghaire						
6	Skills for Work	ETB	165,660	70,961	27,085	98,046	203,484	244,917
7	Further Education Support Services	City of Dublin ETB	148,032	116,844	33,858	150,702	170,473	169,637
		Higher Education						
8	Students with Disabilities	Authority	105,283	29,344	25,430	54,774	73,584	57,954
9	Cycle to Work Scheme	Staff	42,387	-	42,384	42,384	89,736	72,724
10	Skill ETB	City of Dublin ETB	27,458	8,294	3,462	11,756	29,582	89,403
11	Momentum	SOLAS	24,938	13,604	3,312	16,916	147,923	65,046
		Sustainable Energy						
12	Energy Grant	Authority of Ireland	19,320	-	27,138	27,138	5,550	39,970
13	Comhairle Na Nog	Wicklow County Council	17,906	-	20,306	20,306	40,000	34,994
14	Leargas Trips	Leargas	17,820	-	30,363	30,363	61,743	31,368
15	Junior Certificate School Programme Library Project	Professional Development Service for Teachers	15,675	-	17,522	17,522	15,675	17,453
16	Child Counselling Services	Tusla	15,545	11,674	3,080	14,754	35,600	21,785
17	Others - 25 in total	Various	31,241	16,479	19,069	35,548	374,487	418,080
			3,097,709	1,819,418	1,013,795	2,833,214	6,391,570	6,353,059
Self Financing Projects			Year Ended 31/12/2015				18 Months To 31/12/2014	
Item	PROJECT NAME	Funder	RECEIPTS	PAYMENTS			RECEIPTS	PAYMENTS
				Pay	Non Pay	Total		
			€	€	€	€	€	€
1	School Based Activities	Parents/Students	844,439	31,110	860,764	891,874	2,319,875	1,933,635
2	PLC Course Fees	Parents/Students	619,410	41,314	760,850	802,164	-	62,384
3	Field Trips	Parents/Students	492,149	-	502,387	502,387	523,317	402,305
4	Student Contributions	Parents/Students	413,540	-	195,885	195,885	340,122	307,613
5	Transition Year	Parents/Students	389,521	463	348,594	349,057	379,900	433,676
6	Outdoor Education Centre	Various groups/DES	380,859	301,213	113,377	414,590	668,098	661,418
7	Book Rental Scheme	Parents/Students	213,601	-	330,248	330,248	677,361	883,103
8	Student IPADs	Parents/Students	170,471	-	216,439	216,439	260,790	277,641
9	Supervised Study	Parents/Students	158,047	162,079	-	162,079	224,429	227,745
10	Canteen Schools	Parents/Students	157,721	63,130	76,609	139,739	251,781	264,588
11	Exam/Class Materials	Parents/Students	112,065	-	134,120	134,120	195,821	103,971
12	Sports	Parents/Students	110,780	8,015	129,221	137,236	223,425	262,329
13	General ETB Projects	Parents/Students	89,383	-	59,136	59,136	22,736	299
14	Further Education SF Activities	Parents/Students	69,484	17,286	17,807	35,093	105,915	143,517
15	School Completion Administration Fee	SCP's	68,486	-	12,988	12,988	28,157	20,344
16	School Musicals	Parents/Students	66,634	-	99,782	99,782	82,027	66,259
17	Student Transport SF	Parents/Students	60,990	13,302	58,599	71,901	95,748	72,284
18	Rent use of Schools/Facilities	Various groups	44,029	9,018	7,973	16,991	138,219	62,403
19	Administration/Photocopying SF	Parents/Students	41,225	-	73,588	73,588	112,503	33,905
20	Expenditure Financed by Insurance	Irish Public Bodies	27,761	1,830	85,433	87,263	162,681	185,120
21	Leaving Certificate Vocational Prog SF	Parents/Students	23,989	-	33,695	33,695	40,766	35,406
22	Blessington Community Education Centre SF	Parents/Students	19,671	3,505	-	3,505	22,164	33,986
23	E Books	Parents/Students	17,919	-	7,315	7,315	59,057	48,725
24	Others - 18 in total	Parents/Students	56,420	152	123,438	123,590	274,891	389,520
			4,648,594	652,417	4,248,248	4,900,665	7,209,783	6,912,176
Overall Agencies and Self Financing			7,746,303	2,471,835	5,262,043	7,733,879	13,601,353	13,265,235

Programmes Grouped - Receipts less than 12.5K in 2015

Agency Work involves running a programme on behalf of another organisation according to agreed criteria and the Board is reimbursed its cost.

Self Financing Projects are programmes run under the complete control of the Board either for the Board or other organisations.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

6 CAPITAL	Year Ended 31/12/2015 €	18 Months Ended 31/12/2014 €
Receipts		
Dept. Education and Skills	14,264,442	13,237,060
	<u>14,264,442</u>	<u>13,237,060</u>
Payments		
1 New School Arklow	8,388,838	1,942,227
2 St. David's Primary School, Pipers Hill	1,995,739	312,437
3 Newbridge - Extension	1,040,364	129,816
4 Naas Community College - New School	535,659	2,862,789
5 Naas Community College - Loose Furniture & Equipment	186,234	103,354
6 Gael Scoil Permanent	175,146	83,501
7 Celbridge - New Post Primary School	140,060	-
8 Maynooth - Replacement School	127,549	61,070
9 Maynooth - Community College	121,881	73,570
10 Rathangan - Summer Works 2015	113,629	-
11 Maynooth - Refurbishment of Manor Mills	101,293	1,780,356
12 Other - 48 in total	1,266,526	6,680,388
Transfer to ONP	-3708	-72,959
	<u>14,189,210</u>	<u>13,956,549</u>

Projects Grouped (Projects grouped Payment less than €100k)

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

Year Ended 31/12/2015				18 Months Ended 31/12/2014
7 Schools & Head Office Payments*	Pay €	Non Pay €	Total €	€
PAY				
Instruction	54,925,005	-	54,925,005	80,113,087
Administration	3,011,231	-	3,011,231	4,491,050
Maintenance	1,200,053	-	1,200,053	1,827,997
	<u>59,136,289</u>		<u>59,136,289</u>	<u>86,432,134</u>
NON PAY				
Instruction	2,393	896,227	898,620	1,664,229
Administration	32,957	2,194,791	2,227,748	1,457,124
Maintenance	-	1,565,180	1,565,180	3,449,057
	<u>35,350</u>	<u>4,656,198</u>	<u>4,691,548</u>	<u>6,570,410</u>
ASSOCIATED PROGRAMMES				
School Support Services Fund	489,033	259,593	748,626	1,851,057
Book Grant Scheme	-	372,390	372,390	267,025
Examination Supervision	282,630	9,384	292,014	494,790
DEIS Grant	26,005	178,906	204,911	511,068
Revised Syllabus in Design and Communication	-	191,066	191,066	-
Transition Year	352	101,740	102,092	117,467
Students with Disabilities Grant	-	29,183	29,183	28,134
Leaving Certificate Applied	-	22,497	22,497	88,452
Junior Cert Schools Grant	299	21,025	21,324	40,956
Others (15 in total)	680	75,200	75,880	180,477
	<u>798,999</u>	<u>1,260,984</u>	<u>2,059,983</u>	<u>3,579,426</u>
			<u><u>65,887,820</u></u>	<u><u>96,581,970</u></u>

Programmes Grouped (Payments <20k in 2015)

*Schools and Head Office Payments

These relate to the provision of second level and PLC Programmes provided in 22 locations, catering for 12,236 participants as well as night classes in 6 locations, catering for 1,570 participants.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

8	FURTHER EDUCATION AND TRAINING PAYMENTS*	Year Ended 31/12/2015				18 Months Ended 31/12/2014
		Pay €	Non Pay €	Allowances €	Total €	Total €
	Further Education					
	VTOS	3,318,667	1,160,724	3,671,659	8,151,050	12,474,191
	Youthreach	2,532,556	753,243	682,694	3,968,493	5,937,112
	Adult Literacy Development Fund	1,749,317	528,431	-	2,277,748	3,242,960
	Further Education Operational	89,502	625,866	-	715,368	-
	PLC Non Pay	-	127,683	-	127,683	309,686
	Back to Education Initiative	940,157	290,903	-	1,231,060	1,649,169
	CETS Childcare Scheme	-	-	-	-	503,816
	Adult Education Guidance Service	369,855	79,485	-	449,340	668,061
	Further Assessment and Supervision	124,176	-	-	124,176	250,828
	Special Education Needs Initiative	106,100	17,456	-	123,556	201,954
	Youthreach Guidance Counselling	45,648	5,900	-	51,548	64,629
	Refugee Programme	9,114	5,106	-	14,220	-
	FETAC External Authentication	4,269	9,012	-	13,281	31,444
	CPD in Further Education	23,086	-	-	23,086	21,947
	Quality Framework Youthreach	-	4,812	-	4,812	6,537
	Deis Family Literacy	3,734	1,052	-	4,786	3,687
		9,316,181	3,609,673	4,354,353	17,280,207	25,366,021
	Training					
	Specialist Training Providers (STP)	-	297,016	250,907	547,923	-
	Local Training Initiatives	-	49,530	401,980	451,510	-
	Bridging Foundation & Skills Training	-	104,474	188,157	292,631	-
	Community Training Centres	58,123	117,360	34,674	210,157	-
	TC Staff & Operations	59,827	97,766	-	157,593	-
	Traineeships	-	48,689	63,876	112,565	-
	Apprenticeship	-	11,891	13,746	25,637	-
		117,950	726,726	953,340	1,798,016	-
	Total	9,434,131	4,336,399	5,307,693	19,078,223	25,366,021
9	STUDENT SUPPORT SERVICES PAYMENTS					
	Grants and Scholarships				630,390	2,080,077
	PLC Grants				-	6,520
					630,390	2,086,597
10	YOUTH SERVICES PAYMENTS					
	YPFSF	112,597	541,829	-	654,426	1,011,473
	Local Drugs Task Force	-	559,167	-	559,167	858,938
	Special Projects for Youth	-	258,134	-	258,134	324,627
	Youth Work Act	52,660	7,160	-	59,820	145,146
	Youth Café	-	15,990	-	15,990	30,150
	Youth Club Grants	-	88,311	-	88,311	183,836
	Youth Information	-	-	-	-	72,570
		165,257	1,470,591	-	1,635,848	2,626,740

*Further Education and Training Payments

These relate to the provision of Further Education Programmes in 18 locations, catering for 8,939 participants, as well as training in 26 locations, catering for 323 participants.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

11 ANALYSIS OF RECEIPTS BY FUNDER

FUNDER	Programme						TOTAL Year Ended 31/12/2015	Total 18 Months Ended 31/12/2014
	Schools & Head Office	Further Education and Training	Student Support Services	Youth Services	Agencies and Self-financing	Capital		
	€	€	€	€	€	€	€	€
Education and Skills	62,631,112	-	567,140	-	221,221	13,992,419	77,411,892	112,326,824
SOLAS	-	20,262,741	-	-	24,938	-	20,287,679	17,331,421
Parents/Students	355,874	102,136	-	-	4,128,125	-	4,586,135	6,953,549
Staff	2,971,031	-	-	-	50,350	-	3,021,381	4,638,411
Tusla	-	-	-	-	1,203,719	-	1,203,719	2,472,388
Children and Youth Affairs	-	-	-	1,064,568	105,433	-	1,170,001	1,672,859
Longford and Westmeath ETB (SOLAS)	-	694,168	-	-	-	-	694,168	-
Dept. of Health	-	-	-	559,167	-	-	559,167	858,939
School Bank Accounts	-	-	-	-	321,768	-	321,768	1,492,835
Music Generation	-	-	-	-	468,613	-	468,613	772,985
POBAL	-	-	-	-	-	-	-	288,778
Other	-	-	-	-	264,888	272,023	536,911	1,069,409
Social Protection	-	-	-	-	219,576	-	219,576	278,552
Dublin Dunlaoghaire ETB	-	17,040	-	-	165,660	-	182,700	203,484
City of Dublin ETB	-	-	-	-	175,490	-	175,490	200,056
Higher Education Authority	-	-	-	-	105,283	-	105,283	73,584
National Council for Curriculum and Assessment	-	-	-	-	92,348	-	92,348	150,819
School Completion Programmes	-	-	-	-	68,486	-	68,486	28,157
Irish Public Bodies	-	-	-	-	27,761	-	27,761	162,681
Sustainable Energy Auth of Ireland	-	-	-	-	19,320	-	19,320	5,550
Wicklow County Council	-	-	-	-	17,906	-	17,906	40,000
Léargas	-	-	-	-	17,820	-	17,820	61,743
Professional Development Service for Teachers	15,322	-	-	-	15,675	-	30,997	50,392
Assoc of Secondary Teachers, Ireland	-	-	-	-	13,753	-	13,753	13,753
Justice and Equality	-	-	-	-	12,303	-	12,303	11,590
Bank	14,903	-	-	-	-	-	14,903	119,201
Transport Tourism and Sport	-	-	-	-	4,367	-	4,367	172,971
Teaching Council	-	-	-	-	1,500	-	1,500	1,500
Total	65,988,242	21,076,085	567,140	1,623,735	7,746,303	14,264,442	111,265,946	151,452,431

12 STATE FUNDING

(a) State Funding Summary

Main State Grants	Opening Balance	Received Income	Taken to Revenue	Closing Balance
	€	€	€	€
School & Head Office - Pay	-	59,363,080	59,136,289	226,791
School & Head Office - Non Pay	-	4,615,028	4,615,028	-
Associated Programmes	689,693	2,536,683	2,140,026	1,086,350
Capital	(29,206)	14,264,442	14,508,877	(273,641)
Further Education and Training	1,082,203	21,076,085	19,882,965	2,275,323
	1,742,690	101,855,318	100,283,185	3,314,823

(b) Recurrent State Grants

When issued, Recurrent State Grants are essentially a deposit in respect of the actual grant for the year. The actual grant is determined at year end when the actual expenditure for the year is known. This gives rise to the Recurrent State Grant asset or liability at year end.

(c) State Capital Grants

These are Issued in respect of projects specifically approved by the Department of Education and Skills.

The ETB will ensure that the State's investment in the related asset is protected and will not be used as security for any other activity without prior consultation with the Department and sanction of Department of Public Expenditure and Reform.

(d) Use of Grants

The ETB confirms that all grants have been used only for the purposes for which they were issued.

(e) Tax Compliance

The ETB confirms that it is compliant with all relevant tax regulations.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

	Year Ended 31/12/2015	18 Months Ended 31/12/2014
	€	€
13 Current Assets - Recurrent State Grants		
Amount due from Dept. Of Education and Skills	920,092	365,277
Amount due from SOLAS	17,387	302,963
Amount due from Dept. Of Children and Youth Affairs	1,449	2,091
	<u>938,928</u>	<u>670,331</u>
14 Current Assets - Capital State Grants		
Amount due from Dept. Of Education and Skills	1,446,897	678,570
	<u>1,446,897</u>	<u>678,570</u>
15 Current Assets - Other Recurrent Income		
Other Programme Funders	302,678	663,240
	<u>302,678</u>	<u>663,240</u>
16 Current Assets - Third Party Debtors		
Tuition Fees	-	525
	<u>-</u>	<u>525</u>

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

	Year Ended 31/12/2015	18 Months Ended 31/12/2014
	€	€
17 Current Liabilities - Recurrent State Grants		
Amount due to Dept. of Education and Skills	1,726,179	2,045,651
Amount due to Solas	2,292,712	1,343,761
Amount due to Dept.Children and Youth Affairs	49,230	59,436
	<u>4,068,121</u>	<u>3,448,848</u>
18 Current Liabilities - Capital State Grants		
Amount held for Dept. Of Education and Skills	1,173,256	649,364
	<u>1,173,256</u>	<u>649,364</u>
19 Current Liabilities - Other Recurrent Income		
Amount held for Other Programme Funders	3,704,040	3,168,016
	<u>3,704,040</u>	<u>3,168,016</u>
20 Pay and Expense Liabilities		
Pay Liabilities	934,478	695,035
Expense Liabilities	2,299,349	1,027,928
	<u>3,233,827</u>	<u>1,722,963</u>

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

21 Movement in Other Net Current Assets

	Balance as at 31/12/2015 €	Balance as at 31/12/2014 €	Movement in Period €
Current Assets			
Increase/(Decrease) in Recurrent State Grants Receivable	938,928	670,331	268,597
Increase/(Decrease) in Capital State Grants Receivable	1,446,897	678,570	768,327
Increase/(Decrease) in Other Recurrent Income Receivable	302,678	663,240	(360,562)
Increase/(Decrease) in Third Party Debtors	-	525	(525)
	<u>2,688,503</u>	<u>2,012,666</u>	<u>675,837</u>
Current Liabilities			
(Increase)/Decrease in Recurrent State Grant Liabilities	4,068,121	3,448,848	(619,273)
(Increase)/Decrease in Capital State Grant Liabilities	1,173,256	649,364	(523,892)
(Increase)/Decrease in Other Recurrent Income Liabilities	3,704,040	3,168,016	(536,024)
(Increase)/Decrease in Pay and Expense Liabilities	3,233,827	1,722,963	(1,510,864)
	<u>12,179,244</u>	<u>8,989,191</u>	<u>(3,190,053)</u>
 Net Movement			<u><u>(2,514,216)</u></u>

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

22 Amalgamation of VECs

Kildare and Wicklow Education and Training Board was established on 1 July 2013.

On that date the operations, staff, fixed assets, current assets, current liabilities, surpluses and deficits of the former County VEC Kildare and County VEC Wicklow transferred to Kildare and Wicklow Education and Training Board.

Details of the Current Assets, Current Liabilities, Surpluses/Deficits transferred are set out hereunder

	Kildare VEC	Wicklow VEC	TOTAL
	€	€	€
Current Assets			
Recurrent State Grants	590,340	1,300,962	1,891,302
Capital State Grants	33,639	345,469	379,108
Third Party Debtors	540	-	540
Bank Balance	3,209,758	3,859,729	7,069,487
	<u>3,834,277</u>	<u>5,506,160</u>	<u>9,340,437</u>
Current Liabilities			
Recurrent State Grants	3,378,175	4,582,963	7,961,138
Capital State Grants	566,835	502,555	1,069,390
Pay & Expense liabilities	437,562	1,180,357	1,617,919
	<u>4,382,572</u>	<u>6,265,875</u>	<u>10,648,447</u>
Net Current Assets / (Liabilities)	<u>(548,295)</u>	<u>(759,715)</u>	<u>(1,308,010)</u>
Represented By			
Revenue Surplus / (Deficit)	<u>(548,295)</u>	<u>(759,715)</u>	<u>(1,308,010)</u>
Analysis of Revenue Surplus / (Deficit)			
	Surplus (Deficit) 01/07/2013	Surplus (Deficit) 01/07/2013	Surplus (Deficit) 01/07/2013
Programme	€	€	€
Schools & Head Office	(548,295)	(759,715)	(1,308,010)
	<u>(548,295)</u>	<u>(759,715)</u>	<u>(1,308,010)</u>

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

23 Chief Executive's Salary

In accordance with payscales approved by the Department of Education and Skills the Chief Executive was paid €121,050.28 (excluding employer's P.R.S.I.)in the year ended 31st December 2015.

Employer's PRSI of €2,598.61 was also paid.

The CE was paid €1,628 in respect of foreign travel for ETB business purposes during the period.

The CE is a member of an unfunded defined benefit public sector scheme and the pension entitlements do not extend beyond the standard entitlements available under the scheme.

24 Board members' expenses

Expenses are paid to Board members for travel to Board-related meetings. The aggregate expenses paid to each member in the year ended 31st December 2015 were:

Board member	Statutory Meetings	Interview Boards	Attendance at Conferences / Seminars	Other	Total	No. Board Meetings Attended	No. Board meetings eligible to attend
	€	€	€	€	€		
Cllr. Darragh Fitzpatrick	319	5,359	-	-	5,678	5	6
Ms. Finula Haran	744	2,258	-	411	3,413	6	6
Cllr. Brendan Weld	766	386	326	1,222	2,700	6	6
Cllr. Nicola Lawless	553	974	-	-	1,527	4	6
Mr. Danny Haskins	1,101	-	-	-	1,101	6	6
Cllr. Jim Ruttle	844	129	-	67	1,040	5	6
Mr. Noel Merrick	489	380	-	-	869	4	6
Mr. John McDonagh	824	-	-	-	824	6	6
Cllr. Tommy Annesley	600	131	-	65	796	5	6
Cllr. Teresa Murray	392	-	334	-	726	6	6
Cllr. Fiona McLoughlin Healy	661	53	-	-	714	6	6
Cllr. Edward Timmins	394	-	-	-	394	3	6
Ms. Elizabeth O'Gorman	345	-	-	-	345	3	6
Ms. Deirdre Coghlan Murray	253	-	-	-	253	5	6
Ms. Laura Burke	231	-	-	-	231	4	4
Mr. Joe Behan	176	-	-	-	176	3	6
Mr. John Doyle	81	-	-	-	81	3	6
Cllr. Aoife Breslin	77	-	-	-	77	2	6
Cllr. Naoise O Cearúil	60	-	-	-	60	4	6
Cllr Réada Cronin	-	-	-	-	-	5	6
Cllr. Jennifer Whitmore	-	-	-	-	-	4	6
Total	8,910	9,670	660	1,765	21,005		

* If Board members are members of one or more Boards of Management, the expenses paid for these are included above. The Chairman of the Board would also attend other ETB events on behalf of the Committee

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

25 Capital Commitments

At the date of approval of the financial statements KWETB had committed and contracted:

Project	Description	€
Arklow Community College	New School Building	339,324 *
Celbridge Community School	Furniture & Equipment	313,117
Naas Community College	Furniture & Equipment	43,021
Naas Community National School	Minor Works to Prefabs	34,874
St. Conleth's Community College, Newbridge	Major Extension	34,720
Scoil Chonglais, Baltinglass	Window Replacement	28,653
Colaiste Bhride Carnew - Summer Works 2015	Window Replacement	22,756
Confey College	M&E Upgrade	9,648
Greystones Community National School	Minor Works	5,500
Ardscoil Rath Iomghain, Rathangan	Universal Access	5,248
Naas Community College	Equipment	4,119
Colaiste Bhride Carnew	Roof Repairs	3,669
Colaiste Chraobh Abhann	Roof Repairs	3,650
P.E. Equipment	Equipment	3,526
St. Farnan's Post Primary, Prosperous	Universal Access	3,118
Colaiste Chraobh Abhann, Kilcoole	Replacement Calorifier	2,795
Blessington Community College	Reroofing	1,870
St. Thomas CC, Bray	Universal Access	1,279
St. Farnan's Post Primary, Prosperous	Temporary Accommodation	804
Confey College, Leixlip	Boiler Replacement	610
St. Kevin's Community College	Universal Access	399
St. Farnan's Post Primary Prosperous	M&E Upgrade	212
		862,912

*Commitment at 31/12/2015 - Final contract sum increased in 2016

26 Contingencies

At the date of approval of these financial statements, one employee is appealing a Rights Commissioner judgment to the Labour Court.

27 Pension Related Deduction

€3,613,337 was deducted from all staff by way of pension levy and paid over to the Department of Education and Skills.

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

28 Property register

Kildare and Wickow ETB provides educational services from the properties listed below:

Category	Location	Status	Annual Rent	Lease expiry
Administrative Offices				
Kildare Administration Office	Aras Chill Dara, Naas	Leased	142,072	December 2016
Limerick Road Site	Limerick Road, Naas, County Kildare	Freehold	N/A	N/A
Wicklow Administration Office	Church Street, Wicklow	Leased	57,810	31/08/2015
Wicklow Administration Office	Wentworth Place, Wicklow		58,100	Under negotiation

Schools				
Pipers Hill College	Kilashee, Naas, County Kildare	Freehold	N/A	N/A
St. Conleth's Vocational School	Newbridge, County Kildare	Freehold	N/A	N/A
Curragh Post Primary School	Curragh, County Kildare	Rented	Peppercorn	N/A
Ardscoil Rath Iomghain	Rathangan, County Kildare	Freehold	N/A	N/A
St. Farnan's Post Primary School	Prosperous, County Kildare	Freehold	N/A	N/A
Maynooth Post Primary School	Maynooth, County Kildare	Freehold	N/A	N/A
Maynooth Community College	Maynooth, County Kildare (shared with MNS above)	Freehold	N/A	N/A
Athy College	Monasterevin Road, Athy, County Kildare	Freehold	N/A	N/A
Colaiste Lorcaín	Castledermot, County Kildare	Freehold	N/A	N/A
Confey College	Leixlip, County Kildare	Freehold	N/A	N/A
Pipers Hill Community National School	Kilashee, Naas, County Kildare	Freehold	N/A	N/A
Naas Community College	Craddockstown Road, Naas, County Kildare	Freehold	N/A	N/A
Naas Community National School	Craddockstown Road, Naas, County Kildare	Freehold	N/A	N/A
Avondale Community College	Rathdrum, County Wicklow	Freehold	N/A	N/A
Arklow Community College	Coolgraney Road, Arklow, County Wicklow	Freehold	N/A	N/A
Blessington Community College	Naas Road, Blessington, County Wicklow	Freehold	N/A	N/A
Coláiste Bhríde	Carnew, County Wicklow	Freehold	N/A	N/A
Coláiste Bhríde - Prefabs	Carnew, County Wicklow	Leased	69,876	Under negotiation
Coláiste Raithín	Bray, County Wicklow	Freehold	N/A	N/A
Coláiste Chraobh Abhann	Kilcoole, County Wicklow	Freehold	N/A	N/A
Scoil Chonglais	Baltinglass, County Wicklow	Freehold	N/A	N/A
St. Kevin's Community College	Dunlavin, County Wicklow	Freehold	N/A	N/A
Colaiste Chill Mhantain	Burkeens, Wicklow	Freehold/PPP	N/A	N/A

Gaelcholáiste na Mara	Pearse Park, Arklow, County Wicklow	Site Rented	40,000	Building owned by KWETB
Coláiste Raithin	St Andrews, Bray, County Wicklow	Leased	25,000	Under negotiation

College of Further Education

Bray Institute of Further Education	Novara Ave, Bray, County Wicklow	Freehold	N/A	N/A
Bray Institute of Further Education (four prefabs)	Novara Ave, Bray, County Wicklow	Rented	32,960	Under negotiation
Bray Institute of Further Education (dance studio)	Bray, County Wicklow	Rented	6,285	Under negotiation
Bray Institute of Further Education	Parochial Hall, Bray County Wicklow	Rented	12,722	Under negotiation

Centres

VTOS	Old Vocational School, Athy, County Kildare	Freehold	N/A	N/A
VTOS	Riverforest Shopping Centre, Leixlip, County Kildare	Leased	72,166	September 2018
VTOS	George's Street, Newbridge, County Kildare	Leased	188,000	Under negotiation
Youthreach	Old Vocational School, Athy, County Kildare	Freehold	N/A	N/A
Youthreach	Mill Lane, Leixlip, County Kildare	Leased	20,100	December 2016
Youthreach	Jigginstown, Naas, County Kildare	Leased	34,000	March 2020
Athy Literacy	16 Nelson Street, Athy, County Kildare	Freehold	N/A	N/A
Kildare Literacy	Old Vocational School, Kildare Town, County Kildare	Freehold	N/A	N/A
Naas Adult Basic and Community Education	Jigginstown, Naas, County Kildare	Leased	37,070	October 2020
Adult and Further Education Centre	Aras Slainte, Station Rd, Newbridge, County Kildare	Leased	25,000	N/A
Education Centre	Manor Mills, Maynooth, County Kildare.	Freehold	N/A	N/A
Outdoor Education Centre	Weavers Square, Baltinglass, county Wicklow	Freehold	N/A	N/A
Further Education Centre	Blessington, County Wicklow	Freehold	N/A	N/A
Bray Music School	Bray, County Wicklow	Freehold	N/A	N/A
Seomra Youth Centre	Carlile House, Bray, County Wicklow	Leasehold	N/A	N/A
Adult Learning Centre	Baltinglass, County Wicklow	Freehold	N/A	N/A
The Vault Youth Centre	Arklow, County Wicklow	Freehold	N/A	N/A
Youth & Sports Centre, Arklow	The Marshlands, Arklow, County Wicklow	Site owned by Arklow TC. Building owned by KWETB	N/A	N/A
Further Education Centre	Arklow, County Wicklow	Leased	250,920	30/04/2031
Further Education Centre	The Murrough, Wicklow	Leased	180,690	30/06/2017
Further Education Centre	The Murrough, Wicklow	Leased	53,609	31/08/2017
Adult Learning Centre	Bray, County Wicklow	Leased	25,000	31/07/2022

Adult Education Centre	Bray, County Wicklow	Leased	172,500	30/04/2019
Youthreach	Bray, County Wicklow	Leased	52,000	Under negotiation
Adult Learning Centre	Main Street, Carnew, County Wicklow	Rented	9,000	Under negotiation

Properties owned by KWETB and occupied by others				
Facility	Location	Occupied by	Annual Rent to KWETB	KWETB Status/ Annual Rent paid by KWETB
Former Abbey Community College	Wicklow Town	Gaelscoil Chill Mhantain	N/A	Freehold/ N/A
Proposed Further Education and Training Centre	Maudlins Industrial Estate, Naas, County Kildare	Postbrook Limited	NIL	Leased (expiry June 2016)/ €40,000

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

Notes to The Financial Statements - Year Ended 31st December 2015

29 Approval of the Financial Statements

The Financial Statements for the year ended 31/12/2015 were approved by the Board of KWETB on 2nd August 2016 and again on 10th October 2016. However, the Statement of Internal Control was not approved until 27th November 2016.



**Comptroller and Auditor General
Report for presentation to Dáil Éireann**

**Kildare and Wicklow Education and Training Board
Financial Statements 2015 — Supplementary Report**

**Lapses in controls over procurement of capital
projects and certain other expenses**

December 2018

Kildare and Wicklow Education and Training Board — Lapses in controls over procurement of capital projects and certain other expenses

In addition to providing an opinion on the financial statements of an education and training board on completion of the audit, Section 7(4) of the Comptroller and Auditor General (Amendment) Act 1993 (as amended by the Education and Training Boards Act 2013) provides for the Comptroller and Auditor General to draw up a supplementary report in writing on

- such matters arising from the audit of an education and training board as s/he considers it appropriate to report on, and
- such matters as s/he considers it appropriate to report on arising from her/his examination of the system of internal control operated by a board to ensure
 - the regularity of its financial transactions
 - the correctness of its income and expenditure
 - the reliability and completeness of its accounting records, and
 - the safeguarding of the assets owned or controlled by it.

The report has been prepared under Section 7(4) (as amended) arising from the audit of the 2015 financial statements of Kildare Wicklow Education and Training Board.

The report deals with lapses in controls over the use of the resources of Kildare and Wicklow Education and Training Board with respect to the procurement of capital projects and certain other expenses identified during the audit. The sole and exclusive focus of this report is on Kildare and Wicklow Education and Training Board, and not on staff members or any third parties. For the avoidance of doubt, this report does not make any criticism or comment, whether express or implied, with respect to staff members of Kildare and Wicklow Education and Training Board or any third party, and should not be understood as doing so.



Seamus McCarthy
Comptroller and Auditor General

24 December 2018

Kildare and Wicklow Education and Training Board — Lapses in control over procurement of capital projects and certain other expenses

- 1 Kildare and Wicklow Education and Training Board (KWETB) was established in July 2013 by the Education and Training Boards Act 2013 (the Act). Under the Act, the assets, liabilities and staff of Kildare Vocational Education Committee and Wicklow Vocational Education Committee were transferred to KWETB.

Corporate governance of Education and Training Boards

- 2 Corporate governance is concerned with developing appropriate structures and processes for directing and managing an organisation so that stakeholders can be assured that the organisation is doing its job, in line with statutory requirements and any funding rules and restrictions, in an effective and efficient manner.
- 3 The Board of an Education and Training Board (ETB) is one of the core elements of corporate governance in ETBs. The Board of an ETB is made up of 21 members — 12 members elected by the relevant local authorities, with the remainder being made up of staff of the ETB, parents of students registered with the ETB and bodies who have a special interest in, or knowledge of, education and training.
- 4 The Act sets out the functions of the Board. The key reserved functions of the Board specified in the Act include
 - the appointment and suspension of a chief executive
 - the establishment of a finance committee to examine and report to the Board on financial matters relating to KWETB
 - the establishment of an audit committee to assist the Board in discharging its internal audit functions
 - keeping all proper and usual accounts of monies received or expended by it, and
 - preparation, adoption and submission to the Minister of Education and Skills (the Minister) of an annual report in relation to the performance of the Board's functions.
- 5 Every function of the ETB that is not a reserved function of the Board is an executive function. The executive functions of an ETB are performed by the chief executive of that ETB. In addition, the chief executive is
 - required to provide such information to the Board/Minister regarding the performance of his or her functions as the Board/Minister may from time to time require
 - accountable to the Board for the due performance of his or her functions
 - accountable to the Board for the performance of the functions delegated by him or her to a specified member of staff.

Code of Practice for the Governance of Education and Training Boards

- 6 In addition to the Act, ETBs operate under codes of practice. KWETB operated under the provisions of the *Code of Practice for the Governance of Vocational Education Committees* (issued in 2005) until the (March 2015) *Code of Practice for the Governance of Education and Training Boards* (the Code) was adopted by KWETB in May 2015. Under the Code, the Board is responsible and accountable for the proper direction and control of the ETB. The Code sets out standards for members and staff of ETBs. Members and staff are expected to ensure that their activities in relation to the ETB are governed at all times by those standards, in letter and in spirit.
- 7 ETBs face a wide range of strategic, operational and financial risks. The Code states that each ETB should develop a risk management policy. The Board should approve that policy and the related framework, and monitor their effectiveness. Key elements of the Board's oversight of risk management would include
- making the management of high level risk a standing agenda item at Board meetings
 - approving the risk register, at least annually, and
 - requiring external review of effectiveness of the risk management framework on a periodic basis.
- 8 A requirement set out in the Code is that the ETB should have procedures to identify, monitor and manage actual and perceived conflicts of interest of Board members and executive management.
- 9 The statement of Board responsibilities contained in the financial statements states that the Board is responsible for, amongst other things, safeguarding its assets and taking reasonable steps for the prevention and detection of fraud and other irregularities. In addition, in the financial statements, the Chairperson acknowledges the responsibility of the Board for ensuring that an efficient and effective system of internal control is maintained and operated.

Audit of 2015 financial statements

- 10 The fieldwork for the 2015 financial audit of KWETB took place between January and March 2017. During fieldwork, the audit team requested routine documentation and explanations about aspects of procurement, project cost overruns and propriety matters in 2015. The information KWETB provided to the audit team in response to those requests was not sufficient, and certain concerns were identified. Additional testing was undertaken and further explanations were sought. Audit concerns remained. As a result, a formal audit query on these matters was issued to the (then) Chief Executive of KWETB in June 2017.

Audit query

- 11 The audit query requested additional information and supporting documentation in relation to
 - contract documentation
 - 'summer' capital works and related payments
 - project cost overruns and
 - propriety matters.
- 12 The audit query contained questions on related parties. The audit found evidence of a connection between an identified supplier (Contractor A) and the (then) Chief Executive. The audit query requested KWETB to state if there was any family, personal or business connection between certain entities and the (then) Chief Executive. In the response provided by the (then) Chief Executive, he declared a close family connection with Contractor A. A connection with an extended family member was also declared in relation to Contractor B. In addition to the response provided, the (then) Chief Executive supplied a copy of a revised annual declaration of interests for 2016 which included a declaration of interest to KWETB in respect of Contractor A.
- 13 The information and supporting documentation provided by KWETB on 5 July 2017 in response to the audit query were also considered to be inadequate. The audit concerns were not allayed. I took legal advice, and acting on that advice, my Office brought the issues of concern to the attention of the (then) Chair and Vice Chair of the Board of KWETB, and the Chair of its Audit Committee on 13 July 2017. The (then) Chair of the Board has stated that the issues had not been brought to the attention of the Board by members of the executive.
- 14 My Office also informed the Department of Education and Skills (the Department) of the audit concerns on 21 July 2017. The Department pursued its own enquiries with KWETB arising from these issues as well as other matters of concern to the Department. In October 2017, the Minister appointed a statutory inspector^a to carry out a statutory investigation on the performance by KWETB of its functions, particularly in relation to public procurement, usage and disposal of assets and propriety matters.
- 15 The (then) Chief Executive of KWETB retired in December 2017.
- 16 The statutory inspector appointed by the Department issued a draft report in March 2018, a copy of which was supplied to my Office.
- 17 The audit query was re-issued to KWETB in April 2018 in order to allow KWETB the opportunity to reflect on the original response and to provide a revised response with additional information. The Chief Executive provided a response to my Office in May 2018. Annex A summarises the issues raised in the original and reissued audit queries, and sets out the KWETB responses.
- 18 A final report from the statutory inspector was supplied to my Office in July 2018 (Annex B) and a formal Ministerial direction was issued to KWETB in October 2018 (Annex C).

^a Appointment by the Minister as provided for in Section 40 of the Education and Training Boards Act 2013.

Weaknesses in governance

- 19 Some key weaknesses in the governance of the ETB were noted
- Due to the holding of local elections, no Board meeting was held after May 2014 until a new Board was in place in September 2014.
 - No finance committee or audit committee was in place during the period June 2014 to May 2015.
 - There was no risk function or approved risk register in place in KWETB during 2015. The risk register was approved by the Audit Committee in August 2016 and a risk function was implemented in December 2016.
 - No annual report was provided to the Minister by KWETB in respect of 2014 or 2015.

Declaration of interests

- 20 The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 provide for the disclosure of interests by public servants through an annual written statement.^a This statement of interests is required to be furnished not later than 31 January of the following year. It should disclose the interests of the person, of his or her spouse or civil partner, or of a child of the person or of his or her spouse.
- 21 In addition, where a member of staff of an ETB has an interest in any contract or proposed contract, they should disclose to the Board the nature of their interest and not influence or seek to influence a decision to be made in the matter.^b
- 22 There is a requirement that statement of interests forms for the relevant staff of KWETB are submitted to the Chief Executive. Where a relevant staff member considers that s/he has no interest to declare, there is no legal obligation on her/him to make a return.
- 23 KWETB reported that 167 staff members were potentially required to complete an annual statement of interests form for 2015. 144 statements were returned, all of which were 'nil'. In the most recent year (2017), 134 staff members were potentially required to complete statement of interests forms. 127 statements were returned, 126 of which were nil. There was one declaration of interests which KWETB stated that it noted.
- 24 As part of the audit, statements of interests were reviewed for senior members of staff. The table below details the disclosures by the (then) Chief Executive. Copies of the 2014, 2015 and original 2016 disclosures were obtained by the audit team as part of the audit fieldwork. All of these disclosed nil relevant interests. Following the issuing of the original (June 2017) audit query, a revised form was provided by the (then) Chief Executive in relation to 2016. The (then) Chief Executive has stated that he relied on legal advice when completing the declaration of interests form for 2014 that was signed together with the 2015 form, in October 2015.
- 25 The KWETB records do not indicate whether the (then) Chief Executive's declarations of interests were submitted to the Chair of the Board as required by KWETB procedures and the Ethics in Public Office Act 1995.

a Under the Acts, emerging conflicts of interest must also be disclosed when they are identified, and a conflicted official must withdraw from relevant decision-making.

b ETB Act 2013, schedule 3 (paragraph 12).

Figure 1 Statements of interests made by the (then) Chief Executive

Year	Statement of interests	Due date	Signed
2014	Nil	31 January 2015	19 October 2015
2015	Nil	31 January 2016	19 October 2015
2016 original	Nil	31 January 2017	9 May 2017
2016 revised	Disclosure	31 January 2017	5 July 2017

Source: Kildare and Wicklow Education and Training Board

- 26 The (then) Chief Executive's revised statement of interests for 2016 disclosed that a family member has an interest in a firm of contractors (Contractor A) that benefitted from a number of capital projects procured by KWETB.

Key audit concerns

- 27 Annex A provides detail in relation to the issues that were covered in the audit query and the responses received from the (then) Chief Executive and, subsequently, in response to the re-issued audit query, by the current Chief Executive.
- 28 Concerns remaining after the audit include
- Incomplete documentation in relation to certain procurements.
 - KWETB procurement documentation was held 'off-site' i.e. not within the direct control of the ETB.
 - Consultants to advise on certain capital projects were appointed without competition.
 - Some contracts were awarded where it appeared from documentation that the successful bidder failed to meet certain required minimum standards.
 - Documentation provided to the audit team did not explain the basis on which certain decisions were taken — there were inconsistencies and a lack of supporting information for the scoring of tenders.
 - Contracts were identified that were awarded to a firm with connections to the (then) Chief Executive, which were not disclosed.
 - KWETB rented an industrial property in 2015 which was subsequently partially licensed to the same connected firm, with inadequate documentation of the on-licensing arrangements — rent and service costs were only paid to KWETB after concerns were raised by the audit.
 - Procedures regarding change orders in relation to the construction of a school in Arklow were not followed. This resulted in additional expenditure of €483,000.
 - KWETB disposed of a van within a year of purchase, but received no payment until after audit queries were raised. In addition, a full year's motor tax was paid by KWETB just before the disposal occurred.
 - KWETB incurred significant expenditure with certain hotels without a competitive procurement process.
 - Subsistence claims by the (then) Chief Executive did not comply with regulations.

Conclusions

Specific to Kildare and Wicklow Education and Training Board

- 29 Conflicts of interest which are not disclosed to a public body cannot be appropriately managed. KWETB did not actively pursue non-submission of declarations, nor did it critically review the content of declarations.
- 30 The Board did not effectively challenge the executive during the period under review. Underlying causes for this include incomplete information being provided to the Board, delay in establishment of statutory sub-committees and a lack of internal audit resources. An effective process for review of internal controls was not in place.

Response of the Chief Executive of KWETB

KWETB has implemented and actively manages a process for dealing with conflicts of interests. This process includes written formal requests, review of same and a procedure for the management of conflicts in line with the 2015 *Code of Practice for the Governance of ETBs*, Sections 9 - 11.

Persons with nil interests are not, under the current legislation, required to submit a declaration. However, KWETB does follow up in writing.

Each Board member and staff member has been made aware of their responsibilities under Sections 9 - 11 of the Code.

KWETB approved its protected disclosures policy in March 2017 and all staff and Board members have been made aware of same.

KWETB are currently reviewing its conflict of interest and protected disclosures policies, both due to be completed in early 2019.

In 2015, a system of internal controls was in place and was approved by the Audit Committee in April 2016.

In December 2017, a review commenced to further develop a comprehensive and more robust system of internal controls which was approved by the Audit Committee in March 2018. This is a live document and is currently being enhanced in light of the statutory inspector's and Comptroller and Auditor General reports. The revised internal controls framework includes a robust set of controls designed to identify and mitigate against risks in the areas of, but not limited to, capital project management, procurement of goods and services, invoice management, financial management, creditor control and bank account management.

There is currently a comprehensive reporting system to the Board from the Executive on the key functions of the organisation.

In addition, KWETB (in line with the recommendations of the statutory inspector's report) is engaged in a process of self-review and evaluation to develop a more robust governance framework to enable full oversight by the Board.

The KWETB finance committee is currently fully constituted and meets in line with the requirements as outlined in the 2015 *Code of Practice for the Governance of ETBs*.

The KWETB audit committee was fully constituted until 30 September 2018 when the Chairperson resigned. KWETB is in the process of appointing a new member and a new Chairperson. The audit committee meet in line with the requirements as outlined in the 2015 *Code of Practice for the Governance of ETBs*.

Secretary General's response

The statutory inspector's report highlighted that effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. He makes a number of findings and recommendations in relation to a range of specific matters which he investigated, including that the Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within KWETB. Overall, he concluded that in the case of KWETB the main components of a robust and transparent procurement framework were in place. The statutory inspector also found that, while there were gaps, these do not explain the failures to meet the procurement requirements approved by KWETB.

Furthermore he found that if adhered to, the procurement governance arrangements in place were sufficient to ensure conflicts of interest did not arise in procurement matters but there was disagreement on whether or not the procurement function was delegated.

The statutory inspector has made a number of recommendations in relation to his findings. In addition to setting out that the Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within KWETB, he recommends that the Board, utilising the services of an external agency, should develop policies and procedures covering

- procurement and any related matters
- managing real or perceived conflicts of interest at Board or Executive level, and
- the functioning of the Audit Committee to ensure that its effectiveness and make adjustments as required.

On foot of the statutory inspector's report, the Minister issued final directions under Section 41 of the 2013 Act to KWETB which require the Board to, *inter alia*, review the actions in the action plan which the ETB prepared upon receipt of an earlier draft of the statutory inspector's report and to implement a final action plan arising from this review. The Board was also asked to review measures regarding conflicts of interest, undertake mandatory governance training, conduct a self-evaluation and provide a comprehensive update to the Department on all matters within three months and thereafter until otherwise notified. It is also required to engage with the Department on governance and oversight arrangements and to comply with any obligations arising from the ongoing investigations by statutory agencies on matters arising from the report.

General conclusions regarding governance of ETBs

- 31 The Boards of ETBs have key functions to perform, including oversight of their executives. In effect, however, the Board is heavily dependent on the executive in the exercise of its functions.

Secretary General's response

The Department places a high value on the role of ETBs in the education sector and recognises the importance of the provision they make across several levels of education. ETBs are supported by funding, provided directly by my Department and via SOLAS, which amounted to in excess of €1.8 billion in 2017. Given that level of funding support, ongoing management and monitoring of their supports is a constant feature of the Department's work.

Like all areas of the civil and public service, ETBs suffered retrenchment during the financial crisis but the Department has placed an increased emphasis on supporting them in recent years. In relation to supports for administration and governance in ETBs, a range of measures and improvements have been provided.

This includes a review of structures for senior management in ETBs at Director grade which saw the Department sanction an additional 39 posts providing critical support by way of a significantly enhanced senior management tier to Chief Executives, Board administration, further education and schools directorates. Work is ongoing with management, staff and their representatives on the appropriate staffing structures at the level below Director to further support and embed the Department's strategic plan for ETBs as part of the current phase of organisational design.

Permanent staffing posts have been sanctioned across many grades in ETBs in recent months in recognition of the retrenchment which occurred during the financial crisis for work in key areas such as finance, human resources and corporate services. In addition, the Department has provided separate support to ETBs for immediate pressures in areas such as pensions and General Data Protection Regulation.

The Department, in 2017, sanctioned additional posts for the Internal Audit Unit (IAU) of the ETBs (IAU-ETBs), doubling its staffing levels, to allow it to undertake the necessary audits of internal controls and systems within ETBs. The increased complement also includes provision for a Deputy Director of the Unit. The recruitment is ongoing. In the meantime, the Department has supported the work of the Unit by the provision of additional funding to secure external audit expertise. It is likely to be early 2019 before the full complement of staff will be available in the IAU-ETBs.

The Department has an ambitious programme of reform in ETBs including for shared payroll and finance services. This will allow for ETB resources to be freed up to focus on their core mission as the areas of payroll and finance services will migrate to centralised shared services. Work is progressing well and it is envisaged that the ETB payroll shared service will go live from mid-2019 with two ETBs. Following on from this, the remaining ETBs will migrate to payroll shared services following a planned wave migration strategy through to 2021. In terms of financial shared services, it is envisaged that a request for tenders will be published in the coming months.

The Department considers that the strengthening of Education and Training Boards Ireland (ETBI) is critical and has provided dedicated resources to ETBI in a number of areas. ETBI is uniquely placed at the core of the ETB sector to provide a consistency of approach to key matters such as procurement, legal work, and human resources and to embed the public sector and Department's change management programme. Sectoral fora as well as dedicated units with expertise on key issues within ETBI are central to this process and have to-date been very successful, given ETBI knowledge of the work and challenges for ETBs.

In 2017, the Department collaborated with the ETBI, the Office of the Comptroller and Auditor General and the IAU-ETBs to provide briefing/information sessions in three regional locations to all members of ETBs' audit and finance committees. Department staff also provided input at ETBI events such as a Chairpersons' briefing session on governance matters as well as ETBI's sectoral fora.

In 2015, the Department rolled out a *Code of Practice for the Governance for ETBs* in conjunction with the sector. Work on updating that Code in light of the requirements of the 2016 *Code of Governance for State Bodies* issued by the Department of Public Expenditure and Reform as well as other developments is well advanced and scheduled to be finalised by the end of 2018. Oversight agreements and performance delivery agreements will form a key part of the roll-out and embedding of that Code in the sector. The Department will work closely with ETBs and ETBI on the programme of implementation for the Code.

Annex A

Overview of audit query and responses

Section 1 — Contract documentation

- 1.1 In order to ensure compliance with public procurement regulations and departmental guidelines when purchasing goods and services, public bodies are required to maintain documentation to provide evidence of compliance for audit purposes. In an audit, the audit team select a sample of suppliers where expenditure was incurred and request evidence of the procurement process followed for these suppliers in order to show that value for money was obtained for the supplies.
- 1.2 In January 2017, the audit team requested the supporting information for a sample of contracts with 22 suppliers. Satisfactory information was provided for ten of the samples. Four of the procurements raised significant concerns for the audit team. The main concerns were: difficulties in obtaining the supporting file; acceleration of a project leading to additional costs; and additional work and costs incurred.
- 1.3 In February 2017, the sample was extended. There were concerns in relation to Contractor A and Contractor B due to the fact that they had been recently set up and were involved in multiple works contracts. Some of the procurements for these contracts had originated in the previous audit period.
- 1.4 The documentation routinely requested when reviewing a procurement process includes evidence that the appropriate tender process is used based on the expected monetary value of the goods or service. There should be evidence that the award criteria are fair and transparent. This includes evidence that
 - the tenders are opened in the presence of more than one person
 - the evaluation criteria are set in advance
 - the scoring is completed in line with the evaluation criteria and
 - the results of the competition are communicated with the tenderers.
- 1.5 The audit also reviews the contract with the winning tenderer to ensure that
 - it is signed
 - the key terms and deliverables agree to the original requirements of the tender and
 - the invoices charged agree to the contract terms.
- 1.6 The departmental guidelines contained in the Technical Guidance Document (TGD-007) lists the key requirements for the procurement process, including that
 - Appropriate tender processes are in place for the procurements, having regard to the expected monetary value. For capital projects expected to cost more than €50,000, an advertisement must be placed on eTenders.
 - Deadlines in place for tender returns should facilitate a competitive tender process — a minimum of 15 days is required in most cases.
 - Tenderers are required to submit a suitability declaration form confirming that minimum standards relating to turnover and experience, amongst other things, have been met. Where tenderers do not submit the declaration, they should be excluded from the process. The minimum standards expected for annual turnover is that the contractor's annual turnover for the previous three years was not less than 1.5 times the sum tendered for the project. In addition, it is required that the contractor has carried out and satisfactorily completed three works of a similar nature, size and complexity within the last seven years.¹

¹ Standards set by the Department of Education and Skills in the Declaration of Suitability for Contractors for Small Works (Open Procedure only) Section 3.3 and 3.4 as required to be completed under Technical Guidance Document TGD-007 Design Team Procedures for Small Works. Circular 0059/2013 requires compliance with the Guidelines of TGD-007 for Summer Works Schemes.

- 1.7 In relation to Summer Works Schemes, it is a requirement that all records in relation to a project for which funding is approved must be kept for seven years at the school.
- 1.8 The audit query enquired as to why key contract documentation was held at their own premises by consultant advisors retained by KWETB, and not by the ETB. There were a number of instances where tender information was not provided during audit fieldwork and copies of any missing documents located since the audit team left in March 2017 were requested.
- 1.9 In the response to the audit query the (then) Chief Executive noted that the practice has been to maintain tender and contract documents with the consultants and to only keep reports in the ETB. It notes practical and storage reasons for this practice but notes it has now been changed. The response of the Chief Executive in May 2018 repeats this original response.
- 1.10 In relation to the missing documentation, the (then) Chief Executive provided hand written notes on the projects and included some additional information in his response. The Chief Executive responded in May 2018 by requesting additional time to complete the compilation of outstanding documentation in a comprehensive manner.

Conclusion

- 1.11 Proper procurement processes are an important element for ensuring that value for money is being obtained for the purchases of goods and services. In order to secure departmental funding on certain projects, there is also a requirement that records are maintained by the school/Board. The lack of evidence available from KWETB to support procurement processes is concerning. It is indicative of a poorly controlled process.

Response of the Chief Executive of KWETB

We accept that in certain instances and in relation to certain projects, there was an absence of supporting documentation.

The 2015 procurement policy has now been replaced by the ETB Sectoral Policy which was adopted by KWETB in March 2018. Work is ongoing to ensure full understanding and implementation of this policy.

Supporting documentation is required at all levels of approval and at all stages of the procurement process. This is further supported by a financial authority and approvals levels policy.

Section 2 — Summer works and related payments

- 2.1 It is customary for educational bodies to carry out building and refurbishment works in the summer months in order to avoid disruption during term time. Funding was announced by the Department in Circular 0059/2013 in relation to the Summer Works Scheme (SWS) 2014.
- 2.2 The Department has produced guidance in relation to the appointment of consultants — *Guidance on Procuring Consultants for Small Works*.¹ In addition, the SWS circular states that the onus is with the school authority to ensure that the appropriate level and range of service is procured and it must ensure that the consultant is in the appropriate discipline for the works concerned.
- 2.3 The conditions attached to the drawing down of SWS funding from the Department include certain confirmations. The Board of Management/Chief Executive must confirm that
- the tender process and the contract award for the appointment of a consultant has been carried out in accordance with the Department's *Guidance on Procuring Consultants for Small Works*
 - the tender process and contract award has been carried out in accordance with the terms outlined in the Department's technical guidance documents as relevant, and a specific reference is made to TGD-007
 - the works undertaken are in accordance with the scope of works for which the grant was approved
 - the Board of Management has placed a contract for the proposed works with the successful contractor and the contractor is on site and has commenced the works.
- 2.4 The audit query requested explanations for the variance in relation to the number of quotations required for contracts less than €50,000. The KWETB procurement policy requires three quotes from suppliers, while the guidelines issued by the Department require that a minimum of at least five quotes must be sought from suitable contractors and a minimum of five obtained. If fewer than five firms submit tenders, the Contracting Authority should only proceed with an award if it considers that there has been genuine competition and that the tender being considered for acceptance represents value-for-money.
- 2.5 In his response, the (then) Chief Executive explained that this was a conscious decision due to the difficulty in obtaining five quotations. The Chief Executive has stated that irrespective of the policy, the majority of works contracts in KWETB relate to Department funded projects where the guidelines issued by the Department apply.

¹ Small works are defined as projects with a capital value of €1 million or less.

Engagement of consultants

- 2.6 The audit requested information in relation to the appointment of consultants on five SWS contracts — St Conleth's Community College heating system, the Blessington Community College boiler upgrade, KWETB boiler and plant maintenance contract, Confey College drainage upgrade, and the purchase of modular buildings.
- 2.7 The key areas to be addressed were
- the process followed in the appointment of these firms
 - quotations submitted by each firm
 - evidence of their experience in projects of a similar nature
 - evidence of qualifications and
 - letters of appointment/contracts containing the agreed scope of work and the level of fee payable.
- 2.8 The same consultant, Consultant X, was engaged for three of the contracts. These projects are St Conleth's Community College heating system, the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contract.
- 2.9 Concerns identified in relation to the appointment of Consultant X to the St Conleth's Community College heating system project were
- Only three quotations were requested rather than the five required under the SWS Circular. Two were dated in April and one request was made in May.
 - A letter to an unsuccessful tenderer informing them of the result of the award was signed and dated before the closing date for the receipt of tenders.
 - Scoring errors were noted in the evaluation table contained in the letters to unsuccessful tenderers.
 - There are no records available for the opening and evaluation process completed prior to the award of this contract.
- 2.10 No procurement documentation has been provided by KWETB in relation to the appointment of Consultant X on the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contracts.
- 2.11 A firm of consultant engineers, Consultant Y, was appointed to advise on the procurement of the Confey College drainage upgrade. The following issues were noted
- The same scoring errors were noted in the evaluation table contained in the letters to the unsuccessful tenderers as were included in the letters on the St Conleth's project.
 - There are no records available for the opening and evaluation process completed for the award of this contract.

- 2.12** The audit query requested supporting documentation in relation to the appointment of Consultant Z to a 'modular building' project. In response, the (then) Chief Executive supplied information relating to design and build services for the provision of a temporary post primary school. The information supplied was a copy of the request for tender/quote, details of tender queries, tender report and copies of correspondence. The original tenders submitted and opening records were not supplied. There is one reference in the tender report to the experience of the consultants for the contract. In relation to Consultant Y, who was appointed on the Confey College drainage upgrade, the (then) Chief Executive notes he was unable to locate the documents in relation to the appointment.
- 2.13** Further information was provided by the Chief Executive in relation to the appointment of Consultant X on the St Conleth's project and Consultant Y on the Confey College Drainage Upgrade. The Chief Executive also requested additional time in order to examine documents on the appointment of Consultant X on the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contracts. The Chief Executive did not provide any additional information in relation to the appointment of Consultant Z.

St Conleth's Community College heating system replacement — €298,000

- 2.14** The contract for the replacement of a heating system in St Conleth's Community College was awarded to Contractor A in July 2014. The following concerns were identified by the audit team
- This contract was advertised, awarded and substantially completed during the period when there was no Board in place in KWETB.
 - There was a reduced deadline for the submission of bids (5.5 working days, instead of the recommended minimum of 15 days) and only one tenderer submitted a tender.
 - Consultant X reported that they did not attend the tender opening. A requirement of TGD-007 is that tenders received on or before the due date and time should all be opened together after the closing date for receipt of tenders, and only by a nominated official of the school authority in the company of the consultant(s).
 - There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' declaring that they met the requirements with respect to turnover and experience. Non submission of the declaration is a basis for exclusion from consideration for the award of a contract.
 - There is no record of the evaluation process completed prior to the award of this contract.
 - The Board minutes confirm that there was correspondence provided to the Department to confirm that the procurement of this contract complied with TGD-007. On this basis, the Department provided funding for this project.
 - Subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in Contractor A.
 - The successful tenderer, Contractor A, did not meet the minimum standards in relation to turnover and experience as the company was only incorporated in March 2014 i.e. three months prior to the tender notice.
- 2.15** The (then) Chief Executive did not provide an explanation to the questions in this section but provided a letter from Consultant X in his response. The reason advanced for the reduced time was to get the works started within a reasonable timeframe for completion in August. The letter notes that there were no grounds for eliminating the successful contractor and that the consultant was satisfied that the contractor had the capacity to carry out the works and that all the employees were competent.
- 2.16** In response to the revised audit query, the Chief Executive references the above letter with respect to an explanation for the reduced timeframe. With respect to TGD-007, the Chief Executive reported that there is no documentation to indicate how KWETB satisfied itself in June 2014 that Contractor A met the requirements of TGD-007.

Blessington Community College boiler upgrade — €268,000

- 2.17 Also, in June 2014, KWETB ran a separate procurement competition for the decommissioning and replacement of the existing heating system in Blessington Community College, which was also awarded to Contractor A. Concerns identified by the audit team were
- reduced deadlines for the submission of tenders (10.5 working days in this instance)
 - how the successful tenderer, Contractor A, met the requirements of TGD-007
 - when evaluating the tender submitted by the successful bidder for the Blessington project, Consultant X referred to the previous experience of the personnel employed by the firm, as opposed to the firm itself
 - in order for KWETB to obtain funding for this project it would have had to confirm that the procurement complied with the requirements of TGD-007
 - subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in the successful bidder, Contractor A.
- 2.18 In his response the (then) Chief Executive referenced Consultant X's letter noting the explanation for the shortened time period. An explanation was not provided with respect to conformity with the requirements of TGD-007. However, additional information was provided with respect to the opening and tendering for this contract. The following was noted from the information provided
- This contract was advertised, awarded and substantially completed during the period that there was no Board in place in KWETB.
 - Consultant X was not present at the opening of the tenders.
 - There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' with its tender submissions.
- 2.19 The response provided by the Chief Executive with respect to the timeframe references that substantial works were required throughout the school building and it was preferable that those works were carried out in the summer months.
- 2.20 In relation to the requirements of TGD-007, the Chief Executive notes that prior to the award of the Blessington contract, a member of staff in KWETB sent an email to the (then) Chief Executive and pointed out that the successful bidder did not meet the minimum standards of TGD-007. The Chief Executive notes that an instruction was issued by the (then) Chief Executive to the staff member to proceed with the engagement of the successful bidder as the contractor for the project.

Boiler and plant maintenance contract — €72,000

- 2.21** In July 2015, KWETB sought tenders for a boiler and plant maintenance contract for all KWETB schools covering the period up to the end of 2017. Following a tender competition, Contractor A was awarded the contract. The concerns identified by the audit were
- The invitation to tender did not include reference to the requirement for applicants to include a signed 'suitability declaration for small works' — this is a requirement under TGD-007 and must be complied with in order to secure departmental funding.
 - There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' with its tender submission — tender submissions were not provided.
 - The successful bidder, Contractor A, did not meet the minimum standard in relation to turnover requirements etc. under TGD-007.
 - No documentation has been provided by KWETB to support the awarding of full marks to the successful bidder on every award criteria apart from price.
 - Errors and inconsistencies in relation to awarding marks to tender submissions were observed on the tender report produced by Consultant X.
 - No quotes were included in the tender report.
 - Subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in the successful bidder, Contractor A.
- 2.22** The response of the (then) Chief Executive did not provide a specific explanation for the non-compliance with the requirements of TGD-007. In relation to the award of marks, the letter provided to KWETB by Consultant X explained that the successful bidder answered all relevant questions as required and provided evidence on all counts of their intention and ability to carry out the works. An additional letter provided by Consultant X in 2017 stated that there was a typographical error in the tender report, accounting for the difference in the marks explained in the description of the evaluation and the score table.
- 2.23** The response by the Chief Executive noted that there was no documentation to indicate how KWETB satisfied itself that Contractor A met the requirements of TGD-007 or to explain how it was awarded maximum marks on all criteria other than price.

Confey Community College drainage upgrade — €122,000

- 2.24** In August 2015, KWETB sought tenders for drainage upgrade works at Confey Community College. The firm who won the works contract, Contractor B, was incorporated in 2014 and therefore did not meet the minimum standards in terms of turnover requirements under TGD-007. Questions in the audit largely focused on the lack of supporting documentation surrounding the procurement, the contract variations that were noted and how Contractor B met the requirements of TGD-007 — particularly in relation to turnover and experience.
- 2.25** In the response to the audit query the (then) Chief Executive provided additional supporting documentation and also the departmental approval for the additional costs. With respect to TGD-007, the response was that an explanation was ‘to follow.’
- 2.26** The response by the Chief Executive notes that the relevant procurement file is in the possession of Consultant Y — this is not in compliance with the Summer Works Scheme (SWS) circular. Her response in relation to compliance with TGD-007 is that there is no documentation available to indicate how KWETB satisfied itself that the winning bidder, Contractor B, met the requirements of TGD-007.

Conclusions

- 2.27** KWETB was not in compliance with procurement regulations and departmental guidelines in respect of a number of ‘summer works’ projects. In particular, the basis of assessment for the selection of contractors was not documented. In some cases, the facts known about certain contractors casts doubt over their qualification to receive the contracts.
- 2.28** The use of truncated deadlines, failure of successful bidders to meet certain minimum standards in respect of turnover and experience, errors, inconsistencies and lack of supporting information for scoring all raise serious concerns as to the overall integrity of the process.

Response of the Chief Executive of KWETB

We accept the conclusions. The above matters are also the subject of the statutory inspector’s investigation. KWETB have implemented the Sectoral Procurement Policy which was adopted by KWETB in March 2018 and work is ongoing to ensure full understanding and implementation of this policy. A schedule of briefing/training sessions has commenced for staff, including organisation support and development staff, school principals and training centre managers.

Section 3 — Project cost overruns

- 3.1 The provision of facilities for education and training requires significant capital investment. It is important that investment proposals are supported by a clear business case and credible estimates of cost. Once a contract has been awarded, the effective management of the contract is vital to ensure that successful outcomes are achieved. The following capital projects were reviewed by the financial audit team.

Arklow College — total capital cost of €10.8 million

- 3.2 In order to ensure completion of the project on time and within budget, the Department stipulates that a named 'employer's representative' (ER) is appointed for each project. The ER is normally the design team leader (e.g. the architect) and is responsible for all progress reports. The ER has authority to issue minor change orders but there are contractual limitations on the value of their authorisation. Departmental procedures outline that no client requested change shall be permitted (whether within the ER's authority or not) without prior departmental authorisation.
- 3.3 In July 2014, KWETB appointed a contractor, Contractor C, to construct Arklow Community College. The contracted completion date for the college was 21 March 2016.
- 3.4 In May 2015, the (then) Chief Executive of KWETB issued an instruction to Contractor C to have the new school ready for occupation in September 2015. In the event, 60% of the building was complete on 14 September 2015 and 100% complete on 23 December 2015 — three months ahead of the original contract completion date.
- 3.5 In the May 2015 Board minutes, there is a report regarding Arklow Community College to the effect that 'An accelerated building programme is being tabled by' Contractor C 'to allow for moving into the new school in September as opposed to the contract programme which allows for the move to take place in the October 2015 midterm break.' There is no record of any discussion on this or of any consideration with respect to the cost implications of this building acceleration.
- 3.6 The instruction to bring forward completion gave rise to an acceleration claim from Contractor C for €755,000. Following a conciliation process, the claim was settled for €483,000. Other claims submitted by Contractor C were also settled at conciliation for €426,000.

- 3.7 The questions raised in the audit query focus on the reasons surrounding the decision to accelerate the project, the advice sought, the estimated acceleration costs, the projected benefits, the sanction sought from the Department and the reasons for the 'other' contract variations. In particular, the audit identified the following concerns
- In his draft recommendation, the conciliator reported that 'the revised requirements in effect amounted to an instruction' to Contractor C 'to accelerate the works and increase the production on site for which' Contractor C is 'entitled to compensation.'
 - Under the contract, any instructions to the contractor should issue from the employers representative — this procedure was not followed in this instance.
 - KWETB did not prepare an estimate of the additional cost of accelerating the project and did not request an estimate from the contractor, as is required under the contract.
 - There is no evidence that alternative solutions were examined before the instruction to accelerate was issued.
 - KWETB did not seek sanction from the Department to accelerate the project.
- 3.8 In his response to the audit query, the (then) Chief Executive provided the following explanations.
- The old school was not fit for purpose. As part of the construction process, seven classrooms were removed as well as the 'life systems' in the building. In addition, staff at the end of term in May 2015 had decommissioned the building and all materials etc. were packed and placed in storage.
 - He had received advice that the old building would require a new fire and disability access certificate and that given the condition of the building, it would not obtain the certificates. He was advised that the building would not be fit for teaching purposes and that he could be charged with culpable manslaughter if an event occurred during occupancy.
 - His priority was to ensure the education of the children in the Board's care was not interrupted and accordingly instructed that a portion of the new building be made fit for purpose for September 2015. He was advised that this was achievable and he directed accordingly.
 - He stood over that decision as it was in accordance with his statutory functions and the project was a devolved project. He did not instruct that the entire new school building be commissioned by September 2015.
 - It was a devolved project and decisions were made on health and safety grounds. It was not an acceleration instruction but a request to have part of the building ready for September occupancy.
- 3.9 In response to the revised audit query, the Chief Executive refers to the response received from the then Chief Executive and that this is the only rationale available to KWETB at this time.

Temporary accommodation — €279,000

- 3.10** In July 2014, additional temporary accommodation — a modular double classroom — was approved by the Department for Naas Community National School (Naas CNS). The contract was completed in April 2015 and the total cost was €206,000.
- 3.11** In July 2015, the modular classroom was moved from Naas to Maynooth to provide additional accommodation for Maynooth Post Primary School at a total cost of €73,000. Contractors A and B were engaged on this project to provide mechanical, electrical and building works for the relocation.
- 3.12** Questions contained in the audit query focused on the business case for the original purchase of the classrooms, followed shortly thereafter by a relocation to Maynooth; the procurement process followed in the appointment of Contractors A and B to install the classrooms in Naas and the procurement process followed when appointing the same contractors to relocate the classrooms to Maynooth.
- 3.13** The following concerns were identified
- There is no evidence that the classrooms were ever used by Naas CNS.
 - An open tender process was not followed for the removal of the modular classrooms to Maynooth, as is required under departmental funding guidelines.
 - The contracted firms did not meet the minimum standards i.e. Contractor A and Contractor B were incorporated in March 2014 and therefore did not satisfy minimum standards in terms of turnover and experience.
- 3.14** The (then) Chief Executive has provided the following response to these issues
- The original sanction for the two prefabs was based on demographic growth of Naas CNS. However, when the additional prefabs were installed, a serious health and safety issue arose in relation to the existing eight prefab classrooms and ancillary accommodation. Following consultation with the Department, it was decided by the Department to relocate Naas CNS to Craddockstown — a new build which was vacant. Parallel to this event, due to technical delays with the building project in Maynooth, the Department authorised the transfer of the two new classrooms in Naas to Maynooth as a cost effective solution.
 - Procurement was by quotation.

High Court settlement

- 3.15** In May 2015, the ETB agreed a settlement in relation to a dispute over a rented property. Questions were raised in the audit query in relation to the nature of the dispute and the compensations payable by KWETB.
- 3.16** KWETB have provided the following response
- A former school building held under lease was in use solely for the Bray Vocational Training Opportunities Scheme (VTOS) up to June 2016. It was occupied by Bray VTOS and North Wicklow Educate Together school for 2016/2017, and is occupied only by North Wicklow Educate Together from 2017/2018. A former monastery building is attached to the school building. The lease taken by KWETB included a basement area which is located under the monastery. However, there was an understanding with the former owners of the monastery that the basement area would not be occupied until it was refurbished. In lieu of the basement area, a space not included in the lease (part of the monastery) was occupied by KWETB on the ground and first floor. The refurbishment was deferred.
 - The current owner of the monastery issued a schedule of dilapidations and sought to implement the strict terms of the lease which were disputed by KWETB.
 - Dilapidations compensation payable by KWETB is €37,500 per year for four years and a one off payment of €45,000 (total €195,000).
 - Legal fees incurred were €33,325.

Conclusions

- 3.17** Non-compliant contract management practice contributed to additional costs of €483,000 on the Arklow College project.
- 3.18** The funding and installation of temporary classrooms at a school site at a cost of €210,000 appears to have been unnecessary as the classrooms were never used at this location. Instead, they were removed within a year and installed in a different location, with additional expense.
- 3.19** KWETB was not in compliance with procurement regulations and departmental guidelines in procuring contractors to move the temporary accommodation.

Response of the Chief Executive of KWETB

KWETB accepts that there was non-compliant management practices on the Arklow College Project. The decision to accelerate the project resulted in an extra payment of €483,000 which was agreed through a conciliation process.

It was established in June 2014 that there was an educational need for the prefabs, given the rise in pupil numbers at School A. The situation subsequently changed when the Department sanctioned School A moving to a different location (a Department owned vacant permanent building), negating the need for the prefabs at School A. However, in August 2015, a new need arose for two prefabs in School B and the Department sanctioned the transfer of the two prefabs to this new site.

Following our review of the situation, we have concluded that KWETB was not fully compliant in procuring contractors to move the temporary accommodation. We can confirm that all necessary procedures and processes with regard to procurement will be followed in similar circumstances, should they arise.

Section 4 — Propriety matters

- 4.1 Propriety matters are examined as part of audit procedures to review standards of conduct, behaviour and corporate governance. The principles of fairness and integrity, the avoidance of personal profit from public business, and the avoidance of waste and extravagance are also examined under this remit.

Rental of Unit A, Naas Business Park, Naas

- 4.2 KWETB entered into a licence agreement in June 2015 for the rental of a property at Naas Business Park ('Maudlins') for an annual rent of €40,000, payable in advance. The property was earmarked as a further education training centre.
- 4.3 In response to inquiries about the use of the premises, the audit was provided with an unsigned licence agreement which indicates that, on 29 June 2015, the ETB sublet the premises to Contractor A. The unsigned agreement provides that KWETB would let the property at a reduced rent because 'the property is not in a fit state for occupation'. The unsigned agreement specifies that Contractor A would make the entire property fit for occupation by cleaning up internally and externally, installing a new fire alarm and security alarm and upgrading all communications in the property. In consideration for carrying out the prescribed works, Contractor A could use a part of the premises "at no extra charge for a period of 3 to 6 months".
- 4.4 Questions raised in the audit query primarily related to the following areas
- how KWETB established it had a requirement for renting the building, and what was its current use
 - whether KWETB sought Departmental sanction prior to entering into a rental agreement
 - whether condition surveys were carried out before and/or after Contractor A was in possession of the premises
 - what works were undertaken by Contractor A and what payments were made to Contractor A for those works
 - what rent was paid/payable by Contractor A
 - what utility and associated costs were incurred by KWETB in relation to the building, and whether these were recouped from Contractor A.

4.5 The (then) Chief Executive and the Chief Executive have provided additional information and supporting documentation in relation to the questions raised in the audit query. However, the following concerns remain

- There is no evidence that a condition survey was carried out prior to KWETB entering into the licence agreement.
- There is no signed agreement with Contractor A in relation to the sub-letting of the premises.
- As there was no approval at Board level, Contractor A had no right to be granted access to assets of KWETB.
- Although Contractor A was apparently to carry out work on the premises in return for a rent-free period, Contractor A was paid €36,000 by KWETB in February 2016 for initial works carried out on the property. This comprised
 - €21,000 related to heating system repairs, water services installation, electrical installation and data cabling installation
 - €6,000 related to facilities upgrades
 - €9,000 related to unspecified additional works.
- Contractor A was also awarded further works contracts on this property. Three separate contracts were awarded in January 2017 for works on the property totalling €125,000.
- Inadequate documentation was provided to support the tender processes completed in relation to the appointment of Contractor A in relation to the multiple works contracts for this property.
- Contractor A did not make any payments to KWETB until the audit queried the arrangement. An invoice was raised by KWETB dated 21 July 2017 for the period August 2015 to May 2016 for rent of €6,700 and utility charges of €1,800. Previously these utilities were met by KWETB. KWETB has stated that payment in the amount of €6,000 was received on 30 August 2017 and lodged to the ETB account.
- There is no evidence that the property has been used as a further education training centre since the date the licence was signed. In May 2018, KWETB reported that the building was currently being renovated and was not in use. The renovations have not been completed due to a planning issue.

Disposal of a motor vehicle

- 4.6** KWETB has acquired a number of pool vehicles for the use of staff for business purposes, but not for personal use. The audit query focused on the business case for the purchase of the vehicles, where the vehicles are kept overnight, details of any personal use, benefit-in-kind tax liabilities and the sale of any of these pool vehicles.
- 4.7** KWETB purchased a van for €12,715 in January 2016. The van was disposed of — apparently by auction — in January 2017, for a reported price of €5,500.
- 4.8** While additional documentation and explanations were included with the responses received from the (then) Chief Executive and the Chief Executive, the following concerns remain
- An alleged oil leak was discovered in December 2016. There was no evidence that an assessment was completed by a mechanic indicating an estimate of the costs required to repair the vehicle.
 - A full year's motor tax (€333) was paid in January 2017, just before the alleged sale of the van.
 - The sale allegedly occurred in January 2017. However, no proceeds of the sale were paid to KWETB until October 2017, following a query by the audit.
 - An invoice dated June 2017 for the sale of the van was provided following a query by the audit, but this showed KWETB as the purchaser rather than the seller. Another sales invoice for the van also dated June 2017 was provided that showed an individual as the purchaser.
 - On receipt of the €5,500 in October 2017, KWETB explained that the funds had been held by the auctioneers as security against other purchases. It was stated that these purchases included a hammer, flower pots, floor mats, a generator, a grinder and racking and shelving valued at €3,700 on a separate invoice dated June 2017.
- 4.9** In addition, any potential benefit-in-kind liabilities cannot be assessed as KWETB did not maintain an accurate log of vehicle use or location.

Hotel expenditure

- 4.10 In 2015, total hotel expenditure by KWETB amounted to €61,550. Payments to a five-star hotel and golf resort accounted for over one third of this with one event costing €10,450.
- 4.11 The audit query requested additional information in relation to the business case for this event, a breakdown of the €10,450 and how the hotel was selected for this event.
- 4.12 In his response, the (then) Chief Executive stated that the event was a two-day strategic planning meeting involving a review of the year, production of new policies, up-skilling of the team and presentations by external experts. The Chief Executive refers to a subsequent response to the Department by the (then) Chief Executive that states that the event was a residential course provided to the ETB principals, deputy principals and senior administrative staff to review the outcomes of the previous year and plan for the next academic year. No supporting material was provided in relation to how the hotel was procured, and the invoice provided contained very little detail.
- 4.13 The Chief Executive provided some material in relation to pricing at three potential locations in relation to the event. However, the following concerns remain
- A list of attendees was not maintained.
 - Irrespective of the distance travelled to attend the event, the cost paid for participants included full-board accommodation.
 - There is no evidence of quotes received prior to procurement in 2015. One comparative costing provided was done in 2017, based on rates advertised on a hotel website.

Subsistence claims

- 4.14 A review of a sample of the (then) Chief Executive's travel and subsistence claims for 2015 was carried out during the audit. The audit team noted instances where it appeared that subsistence may have been incorrectly claimed by the (then) Chief Executive. For example, the minimum distance threshold for determining whether an employee has an entitlement for a payment for subsistence should be measured from the employee's 'point of deviation' i.e. his/her normal place of work or residence, whatever is the lesser. In many instances, it appears that the (then) Chief Executive based claims for subsistence on the longer distance.
- 4.15 It was noted for these instances that only subsistence claims were made. There were no other associated claims, such as mileage.
- 4.16 My Office requested that all the claims submitted by the (then) Chief Executive be reviewed by KWETB. The Chief Executive has confirmed that the review of the former Chief Executive's travel and subsistence for 2015 is now complete and monies owed are being pursued. A review of the former Chief Executive's subsistence for 2016 and 2017 has commenced and if any monies are owed to KWETB for these years, they will also be pursued. The (then) Chief Executive submits that he has complied with Revenue Commissioner guidelines on subsistence claims, although he accepts that these differ from ETB guidelines in several respects.

Conclusions

- 4.17 There was no clear business purpose in place when KWETB entered into the licencing agreement for the 'Maudlins' property. Due to the unusual rental arrangements and the lack of evidence regarding both procurement processes and details of work done in return for payment, there are concerns as to the regularity of this arrangement.
- 4.18 As KWETB did not monitor the use of vehicles it owned, it cannot be established if there was personal use of the vehicles by staff members, and whether a benefit-in-kind liability arises.
- 4.19 Documentation provided by KWETB in relation to the sale of a van is confusing and incomplete. The documentation, the use of the auction house to complete the sale and the basis for the auction house allegedly holding proceeds as security have not been adequately explained. Therefore, there are concerns as to the regularity of this transaction.
- 4.20 Expenditure by KWETB in 2015 at a five star hotel and golf resort appears excessive, with no evidence of any attempts to achieve value for money for the service procured.

Response of the Chief Executive of KWETB

We note the findings of the Comptroller and Auditor General in relation to the licensing agreement for the property referred to as 'Maudlins'. Matters relating to the arrangement at that time have been referred to An Garda Síochána. Whilst there was a demand for training in Kildare articulated in the annual service plans with SOLAS, KWETB accept the conclusion in relation to procurement matters. A lease agreement, in line with KWETB's procurement policy, is now in place for the Naas Training Centre (previously referred to as Maudlins). The redevelopment of the premises for electrical apprentice training is underway as per the KWETB strategic agreement with SOLAS for education and training provision.

Procedures for monitoring the use of pool vehicles were in place but were not followed in all cases and therefore gaps in records have been identified. Following a review of the business case for using pool vehicles in KWETB, we can confirm that the practice is now discontinued.

Following a KWETB review of the sale of the van through an auction house, we accept that information provided to the Office of the Comptroller and Auditor General is incomplete. While we are unable to locate any further documentation that would clarify the situation, we can confirm that KWETB no longer uses or will use the services of an auction house for the purchase or disposal of vehicles.

KWETB accepts the conclusion of the Comptroller and Auditor General about the expenditure at a five-star hotel and golf resort. We are currently carrying out a full review of our hospitality and travel policies to ensure value for money in line with best practice and relevant Department of Education and Skills and Department of Public Expenditure and Reform circulars.

Annex B

Investigation into Certain Matters in Kildare and Wicklow Education and Training Board

Investigation into Certain Matters in Kildare and Wicklow Education and Training Board

Report Prepared by Dr. Richard Thorn, 4th February, 2018

Technical Clarifications submitted on 1st March, 2018

FINAL Report, following right of reply, submitted on 4th July, 2018

Contents of Report

	Page
1 Background and Layout of Report	3
2 Acknowledgements	6
3 Conduct of Investigation	7
4 Terms of Reference 1 a) i, ii and iii	9
5 Terms of Reference 1 a) iv and v	14
6 Terms of Reference 1 a) vi and vii	19
7 Term of Reference 1 a) viii	22
8 Terms of Reference 1 a) ix and 2 b)	25
9 Term of Reference 1 a) x	28
10 Summary of Findings and Recommendations	31
 Appendix One – Section 40 of Education and Training Boards Act, 2013	 37
Appendix Two – Terms of Reference	38
Appendix Three – Response by Board of KWETB	40

1. Background and Layout of Report

1.1 Comptroller and Auditor General Audit

In the course of the Audit by the Comptroller & Auditor General (the '**C&AG**' hereafter) of the Kildare and Wicklow Education and Training Board's (the '**KWETB**' hereafter) financial statements for 2015 the C&AG raised queries directly with the KWETB and then brought a number of issues to the attention of the Department of Education and Skills (the '**Department**' hereafter). The Department corresponded with KWETB and sought responses to the issues concerned.

1.2 Investigation Under Section 40 of the Education and Training Board Act, 2013¹

Having considered the issues raised by the C&AG and the subsequent correspondence between the Department and the KWETB, in exercise of his power under Section 40 of the Education and Training Board, Act 2013, the Minister for Education and Skills (the '**Minister**' hereafter) appointed Dr. Richard Thorn, President Emeritus of the Institute of Technology, Sligo to carry out an investigation (the '**Investigator**' hereafter). The investigation was to consider the performance by the Board of its functions particularly, in relation to public procurement, usage and disposal of assets and propriety and other matters, to submit a Draft report to the Board and Final report to the Minister as soon as was practicable after the Board had considered and responded to the Draft report.

1.3 Layout of Report

The Report consists of ten sections, including this Background, plus two Appendices. An Acknowledgements section is followed by a section dealing with the Conduct of the Investigation. Sections 4 to 9 deal with specific matters identified for investigation in the original Terms of Reference, plus an additional matter included during the course of the investigation (see below). In each of these sections a short Narrative is followed by a Finding(s) and, where necessary, a Recommendation(s). Section 10 is a Summary of Findings and Recommendations. Appendices One and Two reproduce section 40 of the Education and Training Board Act and the Terms of Reference respectively. Appendix Three is the response of the Board of the KWETB.

During the course of the investigation a matter was brought to the attention of the Investigator that was considered to be relevant to the investigation. The matter is included under Term of Reference 2 b) and is dealt with in conjunction with Term of Reference 1 a) ix in this Report.

¹ The full Act may be found at <http://www.irishstatutebook.ie/eli/2013/act/11/enacted/en/html>. Section 40 is included in full in Appendix One.

1.4 Sub Judice Matters

This investigator has been informed that some of the matters considered by it may be the subject of legal proceedings. This Investigator is a stranger to all such proceedings and unaware of their precise subject matter and status. However, the Investigator is cognisant of the need to avoid any act or omission that would amount to a contempt of court in relation to matters that are *sub judice*. If, and to the extent therefore that this Report is circulated beyond the Department of Education and Skills or the Kildare Wicklow Education and Training Board, then consideration should be given to the redaction of sections of this Report the publication or circulation of which might infringe the *sub judice* rule.

1.5 Background Notes

Kildare and Wicklow Education and Training Board was formed on 1st July, 2013. Prior to this the Board consisted of Kildare and Wicklow Vocational Education Committees. In 2017 the Board had a recurrent budget of c. 129 million EUR including 17 million EUR capital. The staff headcount was c. 2,500 and the Board catered for just under 30,000 post primary and further education and training beneficiaries².

During the course of the investigation it became clear to the Investigator that the establishment of the Board in 2013 and its immediate aftermath was characterised by challenging circumstances with new Board and Executive structures to be accommodated and developed, different organisational cultures to be aligned and straitened financial circumstances to be overcome. It is also recognised that this VEC is located in one of the fastest growing areas of education demand in Ireland which poses significant challenges to the Board in meeting its education mission. It is clear that while new staffing arrangements, particularly at Director level, are helping the organisation to meet its educational objectives, challenges remain.

² Figures supplied by the KWETB

1.6 Investigator Statement

During the period that the investigation was being undertaken the author of the Report, Dr. Richard Thorn, was engaged as a Subject Matter Expert by Prospectus, a consulting company, which had been engaged to undertake a Mid Term Review of the SOLAS strategic plan. The investigator disclosed this matter to officials of the Department and to all relevant persons during the course of the Mid Term Review. At no stage was there overlap of this investigation with the Investigator's work on behalf of Prospectus.

The author of the report has no other connection, current or historic, with KWETB.

2. Acknowledgements

The Investigator gratefully acknowledges the support provided by the Department of Education and Skills to the investigation. In particular, the Investigator wishes to thank Geraldine Kennedy, who provided administrative assistance to the investigation.

The Investigator wishes to thank members of the Executive of KWETB, in particular Joe Kelly and Mary Dillon, who assembled the large amount of information required for consideration, who answered queries and who provided working space within the KWETB offices in Naas. The Investigator is grateful to Mr. Michael Lanigan of Poe Kiely Hogan Lanigan Solicitors, legal advisors to the Board in respect of the investigation, for his helping to establish a constructive working relationship which enabled the efficient running of the investigation. The Investigator also wishes to acknowledge the many people in KWETB, and associated with KWETB, who assisted the investigation by providing information and/or who attended for interview.

3. Conduct of Investigation

3.1 Commencement and Submission

The Terms of Reference for this statutory investigation were announced on 4th October, 2017. The investigation commenced on 20th October, 2017. In accordance with the Education and Training Board Act, 2013, Section 40 (the 'Act' hereafter) a Draft was submitted to KWETB on 2nd January, 2018. The Board responded within the calendar month specified in the Act. The full response of the Board is included, as received, at Appendix Three. The Investigator considered the Board's response and made a very small number of minor technical adjustments to the Report – these did not include any changes to findings or recommendations. Beyond noting the comprehensive nature of the response and, in the opinion of the Investigator, the constructive approach to dealing with the Recommendations no observations are made on the Board's response. The report was forwarded to the Department on the 2nd February and, following a request to clarify a number of technical matters, was resubmitted on 1st March, 2018. Following the provision of a right to reply to certain individuals, the FINAL report was submitted to the department of education and Skills on 4th July, 2018.

3.2 Contacts and Meetings

The Investigator was contacted confidentially by four individuals who wished to provide information. These individuals were met and documentation provided by them was accepted and considered.

In addition to the individuals referred to in the paragraph above, thirteen individuals were met during the course of the investigation. These included the Chief Executive (the 'CE' hereafter) of KWETB during the period being considered and the Chair and Vice Chairpersons, who were also the Chair and Vice Chairpersons of the KWETB (the 'Chairperson' and 'Vice Chairperson'³ hereafter) during 2015, prior to their resignation in December, 2017. The Investigator also met the current Chairperson. Two other individuals provided written submissions, upon request, to the Investigator.

3.3 Approach to Investigation

The Department provided a set of files to the investigation that included queries and responses to the C&AG and the Department. In addition, the KWETB provided a comprehensive range of documentation, as requested, during the course of the investigation. These documents formed one component of the investigation.

³ The current Chairperson and Vice Chairperson were, respectively, the Vice Chairperson and Chairperson during 2015.

A second source of information available to the investigation was information made available during the course of meetings or correspondence with persons of interest to the investigation. At an early stage in the process, the legal advisor to the Board of the ETB on matters associated with this investigation, Mr. Michael Lanigan of Poe Kiely Hogan Lanigan Solicitors, was met and a protocol was agreed for meeting with the persons of interest to the investigation. This protocol included, but was not restricted to, Mr. Lanigan being available in advance of and during the meetings to persons the investigation wished to meet. An addition to the Protocol during the period when the Board was considering its Draft responses was that all matters that members wished the Final report to consider were to be transmitted through the Chairperson for the Board as a whole to consider.

A third source of information was written and oral communication with persons of interest to the investigation who were not employees of the KWETB.

Where individuals were met, a note of each meeting was prepared. Where, subsequently, it was decided to use information from these meetings, the relevant section of the Draft was sent to the individual for verification.

In accord with the format adopted in the Terms of Reference whereby individuals, companies and schools were not named, so to in this report. Individuals have been assigned a letter (A, B, C etc) and companies and schools have been assigned a numeral (1, 2, 3 etc).

In June, 2018, following consultation with, and a request from, the Department of Education and Skills a right of reply was offered to the CE and to Company 3. The CE responded by the deadline required. Company 3, sought and received a short extension to the deadline, but by the extended deadline no submission had been received.

4. Terms of Reference 1 a) i, ii and iii

4.1 Introduction

Terms of Reference 1 a), i, ii, and iii are concerned with procurement and are, for the purposes of this Report, grouped together. The relevant Terms of Reference with the preceding statement of requirements are:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *Compliance with Department procedures in relation to the procurement and delivery of various building projects*
- *The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017*
- *The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit'*

4.2 1 a) i - Narrative

'Compliance with Department procedures in relation to the procurement and delivery of various building projects'

A range of EU Directives, national requirements, Department requirements - as expressed through guidelines - codes of practice and established practices cover procurement and the interaction between employer/client, Employer Representative on building projects and building contractors, as considered in this report. In all cases where the Investigator has made a finding in respect of a procurement action or an action in respect of a building project he has referenced the/a particular document that covers the matter.

The matters covered by this Term of Reference comprehend minor building works, as *per* Term of Reference 1 a) iv a contract for heating and plumbing services, as *per* Term of Reference 1 a) viii, an acceleration of a school building project as *per* Term of Reference 1 a) ix, the employment of a consultant on a school building project as *per* term of reference 1 a) x, and a school building project as *per* Term of Reference 2, b).

The Investigation has considered each of these matters in sections following in this report and findings are summarised here. Recommendations specific to the findings at 4.3 are dealt with in the relevant sections in the report.

4.3 1 a) i – Findings

- **Term of Reference 1 a) iv – There are several inconsistencies surrounding the procurement of the minor building works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.**
- **Term of Reference 1 a) viii – A contract for heating and plumbing services for a summer works scheme did not breach Department procurement requirements but the process was suboptimal. In respect of a tender for a drawdown contract, the tender evaluation process appears flawed.**
- **Term of Reference 1 a) ix – The acceleration ('in effect' - as found by a Conciliator) of a school building project was not in accord with Department contract management guidelines.**
- **Term of Reference 1 a) x – The procurement of a mediator by the CE for a school building project did not accord with procurement guidelines. The mediator's appointment did not appear to meet the contract requirements for dispute resolution.**
- **Term of Reference 2 b) – The intervention by the CE in the final account agreement process was not in accord with Department contract management guidelines.**

4.4 1 a) ii - Narrative

'The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017'

The governance arrangements for procurement are addressed by having a suite of policies in place that cover the ethical and technical aspects of procurement that in turn deal with conflict of interest and procedural matters. Further, these policies and procedures are embedded through training, ensuring that disclosures of interest and any conflicts of interest are established and having the necessary structures (e.g. an Audit and Risk Committee) in place to support the work of the Board.

The Board of KWETB approved a procurement policy at its meeting on January 5th, 2015. The policy, developed internally and based on relevant national and EU requirements, remains in force to the present.

On 16th March, 2015 the Board received a briefing from the CE on the Code of Practice for the Governance of Education and Training Boards and this was adopted on 12th May, 2015.

Undated Codes of Conduct for Board members and staff, that cover conflicts of interest, disclosures of interest and requirements to abide by procurement requirements, are in existence. It has been confirmed to the Investigator that these were considered as part of the Code of Practice briefing referred to in the previous paragraph.

Finance and Audit Committees were established at the Board meeting of 12th May, 2015. The Audit Committee is an important part of the Governance framework for an organisation. This Investigator has been informed that, in practice, the structure of the Audit Committee is not fit for purpose. Three reasons are advanced. First, it has no control over the matters it wishes to have audited – these being determined by the Department of Education and Skills Internal Audit Unit (IAU) – even though it may have identified matters germane to the functioning of the ETB and have submitted these issues in writing to the IAU for the ETB's for inclusion in their annual audit plan. Second, the meetings are restricted to four per year - a number not sufficient to undertake the business required of the Committee. Third, membership and attendance requirements mean that meetings have been inquorate and/or problematic to organise thus furthering the difficulty of the Committee meeting its obligations to the Board.

It is this Investigator's understanding that the challenges faced by Audit Committee may not be unique to this ETB.

The requirements of the Standards in Public Office legislation have been met through the submission of disclosure of interest forms. However, the Board has no procedures to manage real or perceived conflicts of interest other than through the Codes of Conduct.

4.5 1 a) ii – Finding

- **Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent procurement framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.**

4.6 1 a) ii – Recommendations

- The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to include their version control, promulgation and sign off by Board members and members of the Executive.
- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

4.7 1 a) iii - Narrative

‘The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit’

In respect of the CE’s role in procurement, Section 16 of the Education and Training Board Act of 2013 provides for a Chief Executive to delegate functions. Such a facility provides a mechanism for the CE to distance themselves from matters, particularly those dealing with procurement, that might constitute a conflict of interest. The CE has noted in correspondence with the Department of Education and Skills (4th September, 2017) that the use of a digital signature on procurement documentation was a legacy issue and should not have happened after the delegation of authority in the ETB’s new corporate structure. The Investigator draws the inference (confirmed by the CE) that procurement matters were to be the responsibility of a Chief Operating Officer (COO) in the new corporate structure. Documents detailing these new operating structures, with one noting them to come into effect from the 1st July, 2013, were made available to the Investigator. The documents provide for the COO to take over responsibility for a wide range of functions hitherto the responsibility of the CE. The Minutes of the Board meeting of 10th November, 2015 note the CE briefing the Board on changes to the staff structure and the assignment of staff duties. It should be noted that there is no specific reference to the COO taking over responsibility for procurement in either the document referred to above or from the minutes of the Board meeting. The Chair and Vice Chairpersons do not recall the CE at this meeting specifically delegating responsibility for procurement. The

then COO has confirmed that at no stage was he assigned responsibility for procurement matters.

The Report has noted (section 4.5) that, in general, the main components of a robust and transparent procurement framework are in place in the KWETB. The Investigator does not believe that the absence of a policy and procedure for the management of conflict of interest can explain the failures in respect of governance of procurement described in the following sections; the procurement guidelines, the code of practice for governance of education and training boards and the codes of conduct, if adhered to, provide a satisfactory ethical and technical framework for the governance of procurement.

4.8 1 a) iii – Finding

- **If adhered to, the procurement governance arrangements in place in 2015, 2016 and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.**

4.9 1 a) iii – Recommendations

- **Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.**
- **The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.**

5. Terms of Reference 1 a) iv and v

5.1 Introduction

Terms of Reference 1 a) iv and v are concerned with a rental property and are grouped together for the purposes of this report. The relevant Terms of Reference with the preceding statement of requirements are:

‘To examine and report on the robustness of the ETB’s responses to the issues raised in the C&AG Audit and the Department’s subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same*
- *The business case for the ETB’s intended use of the rented property and any impact of its unavailability for this intended use’*

5.2 1 a) iv - Narrative

‘The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same’

The background and business decision making process to the selection of a property for training is dealt with in 5.5 below. This section is concerned with the rental and remediation arrangements of the property by Company 1⁴. It should be noted that Company 1 was connected through a family member to the CE of KWETB.

The CE, in an undated ‘Aide Memoir’ on the KWETB files on acquiring a property in Naas for training, notes that the search for a suitable premises revealed rental rates – established by phone – for two properties of 80k and 50k. The property at 50k was selected and rent subsequently negotiated down to 40k. A licence for the use of the property was signed on 29th June, 2015.

⁴ It should be noted that Company 1 is a business name owned by Company 2. Company 2 was named in many of the emails relating to the property.

The property had been used as a dog food factory and required some remedial works prior to occupation and conversion to a training facility.

In the same aide memoir noted previously the CE notes that he requested Company 1 to carry out a range of works to make the property safe including electrical works, air conditioning and cleaning. In response to a query on the use of the property by Company 1 from the Department on 4th September, 2017 the CE states that 'Company 2' were carrying out works for the ETB elsewhere at the time and were asked to make the property safe and that in lieu of the costs of the works they would use two offices. It should be noted that there is no suggestion in the CE's communication with the Department, nor in any of the contemporaneous documentation, that a tender process was used to select Company 1. Subsequently, Company 1 occupied a portion of the building in return for a rent waiver against the work undertaken. A senior staff member from the ETB has confirmed to the Investigator that it was always understood that the cost of the remedial works would be offset against the rent. The rent waiver agreement was subsequently withdrawn for tax reasons and Company 1 was required to pay the rent separately. An invoice for 8,519.12 EUR (rent - 6666.70, telephone charges - 882.00 and electricity charges - 970.42) was issued on 21st July, 2017 for a ten-month occupation from August 2015 to May 2016. On 30th August, 2017 a sum of 6,000 EUR was paid in partial payment of the invoice. It is understood that Company 1 is no longer trading.

Regarding the cost of works carried out, three invoices totalling 32,025 EUR were supplied to the investigator. These are dated 19/1/2016 (19,100 EUR), 3/2/2016 (7,800 EUR) and 4/2/2016 (5,125 EUR).

Between June and November 2017, the ETB was given the opportunity to provide documentation associated with the rent and refurbishment of the property (first by the C&AG, on two occasions by the Department and on two occasions by the Investigator). During the course of interview, the CE was also offered the opportunity to provide information on tendering of the remedial works – none was forthcoming. The protocol for the conduct of the Investigation provided for individuals to receive section(s) of the narrative that drew from their evidence to the Investigator. In this regard the CE received an extract noting that no documentary evidence had been provided of tendering the remedial works. On 19th December, shortly before the deadline for a response, the Investigator received an email with an attached Tender Report for the tendering of the remedial works. The Tender report had been prepared by Company 3 (see below) and was dated 15th December, 2015. A separate email from Company 3 to the KWETB with some back up documentation was also sent on the 19th December.

5.3 1 a) iv - Finding

- The Investigator finds several inconsistencies in the narrative noted above:-
 1. The CE has stated in correspondence and in an aide memoir that Company 1 was requested to make the property safe in return for a rent waiver. There is no contemporaneous documentary or oral confirmation from other than the CE, other than the Tender Report and documentation produced on the 19th December, 2017 that tendering took place.
 2. In Section 4.7 the CE asserts that there was delegation of the procurement function from mid-2013. That being the case, it is not clear why other staff within the ETB were not aware of a tendering process in respect of this project at that time. It should also be noted that the COO maintains that procurement was not delegated to him.
 3. The Tender Report is dated 15th December, 2015. The first invoice is dated 8th January, 2016. Given the intervening Christmas period this appears to be a very short period of time to allow response to the successful tenderer, for that contractor to mobilise on site and for the work to be undertaken.
 4. The fact that an invoice for rent and utilities to cover a period of occupation prior to the date of the tender report was issued in July 2017 supports the CE's original assertion that Company 1 was requested to undertake remedial works in return for a rent waiver and was thus already in occupation of the building prior to the date of the tender report.
 5. With the exception of the tender report and documentation received shortly before the deadline for response, there is no evidence that a tender process took place. The Investigator cannot make a finding as to the authenticity of the tender process disclosed at a very late stage in the investigation.
 6. The CE, in an email, states that the work for the 19,100 EUR invoice noted above was tendered but the additional work was not.

5.4 1 a) iv – Recommendation/Action

- In the absence of the establishment of the authenticity of the tender report and documentation, the Investigator cannot make a finding as to whether an acceptable procurement process for the remedial works took place. Determination of the authenticity of the tender report and documentation reconciliation of the inconsistencies requires investigative powers beyond the scope of this Investigation and the matter has been forwarded to the Garda National Economic Crime Bureau

5.5 1 a) v – Narrative

'The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use'

In early 2014 KWETB submitted a service plan to SOLAS that identified a lack of capital resources necessary to discharge its training function. In late 2014 the ETB established a project timeline for the implementation of the service plan for 2015. At this point training had not been formally transferred to KWETB from SOLAS but it was anticipated that this would happen in 2015. During 2015 a search for suitable properties was initiated. A property at Naas Business Park was identified as being potentially suitable. A licence for the use of the property was signed on 29th June 2015.

The property, which had been used for the manufacture of dogfood, required preparatory work prior to conversion to a training facility. Between late 2015 and September 2016 the property was occupied by Company 1 (see above). During this period Company 1 undertook remedial works on the property.

At the meeting of the Board in August 2016 the CE presented a list of properties he proposed to lease, including that at Naas Business Park, the minutes of the meeting do not record formal approval for any of the leases proposed by the CE. The Code of Practice for the Governance of Education and Training Boards notes that 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' requires approval by the Board. It has been confirmed to the Investigator by the person taking the minutes that the leases were in fact approved but not recorded in a sufficiently clear fashion.

In September 2016 a warehouse training course commenced in the property. In October 2016 SOLAS recommended to the Department that a lease be entered into for the property and that the rent proposed was reasonable provided that the building required no major repairs. In January 2017 SOLAS visited the property to see if the building was suitable for the training of electricians. The report of the visit - issued in February 2017 - noted it was suitable.

5.6 1 a) v – Findings

- There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned training activity.

5.7 1 a) v – Recommendation

- Notwithstanding the urgency of a requirement to establish education and training provision in any location, the Executive and Board members of the Kildare and Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for ‘the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings’ are adhered to.

6. Terms of Reference 1 a) vi and vii

6.1 Introduction

Terms of Reference 1 a) vi and vii are concerned with motor vehicles and are grouped together for the purposes of this report. The relevant Terms of Reference with the preceding statement of requirements are:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *The operation and use of pool vehicles and business case for same*
- *The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB'*

6.2 1 a) vi - Narrative

'The operation and use of pool vehicles and business case for same'.

KWETB owns and operates a number of vehicles. The insurance schedule for the period under investigation shows ten vehicles (excluding lawnmowers) insured by Irish Public Bodies. Many of these vehicles are linked to Outdoor Education Centres and are used for the transport of attendees at these centres to and from activity sites. The CE has confirmed to the Investigator that as part of the cost management process a decision was taken to purchase vehicles for staff use so as to reduce travel expenses. In interview, the CE asserted that a business case for the purchase of vehicles had been previously prepared. During the course of the Investigation a document titled 'Travel Costs/Expenditure for KWETB' was provided. The document, which was undated, provides an analysis of the likely savings from using car pool vehicles for the transport of KWETB staff instead of own vehicles. The Investigator understands that this document may have been prepared prior to the merger between Kildare and Wicklow VECs.

The use of 'car pool' vehicles is covered by Revenue advice⁵; 'A car-pool is where the car is available and used by more than one employee. The car must not be kept overnight at or near the home of any of your employees.' A normal procedure to ensure that no benefit in kind accrues to a staff member through the use of a car pool vehicle for private use, is to maintain a vehicle log. Vehicle key

⁵ <https://www.revenue.ie/en/employing-people/benefit-in-kind-for-employers/private-use-of-company-cars/categories-of-car-use.aspx>

logs covering the period from 2014 to the present were provided to the investigation. The logs record vehicle details and the date and time each is logged out and logged in to its base.

6.3 1 a) vi – Finding

- **A business case for the use of car pool vehicles was provided to the Investigation. A vehicle log covering the period 2014 to the present is in existence.**

6.4 1 a) vii – Recommendation

- **The business case for maintaining a collection of car pool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets standards required to ensure no BIK obligations accrue.**

6.5 1 a) vii - Narrative

‘The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB’.

On 4th January, 2016 a van was purchased by KWETB. The insurance schedule for the period shows the van valued at 12,715 EUR. On 14th December, 2016 the CE received a letter from a KWETB staff member, who had been using the vehicle, reporting numerous faults and advising replacement rather than repair. The CE decided to sell the van. During January 2017 the KWETB received two valuations for 5,500 and 5,250 EUR respectively. It has been suggested to the Investigator that the cost of repair would have run to c. 4,000 EUR which would give a depreciation of approximately 4,000 EUR between the time of purchase and the sale. While the sale price matches the market value for the van, the purchase price a year earlier appears excessive given the subsequent condition of the van.

The CE’s response to the report notes that the insurance valuation showing 12,715 EUR should have been adjusted downwards by the ETB thus reducing the apparent over valuation of the vehicle.

On 29th January, 2017 a member of staff received a request from the CE to release the vehicle license certificate to another member of staff. A letter dated 25th August, 2017 notes that a representative of an auction room confirmed a sale date of 19th January, 2017. The sales invoice for the van, for 5,500 EUR, is dated 19th June, 2017. The Investigator was informed that the discrepancy arose from the

fact that a) the sale proceeds were being held by the auction house to be set against other items that had been purchased by the KWETB⁶ and b) the finance system in operation in the auction house could not backdate the sale date.

6.6 1 a) vii – Finding

- **The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.**

6.7 1 a) vii – Recommendation

- **The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at section 5 above, is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.**

⁶ The material provided to the Investigator contains a list of items purchased at auction by the ETB from the auction house on 3rd June, 2017. The value of the items listed is 3,682.83 EUR.

7. Term of Reference 1 a) viii

7.1 Introduction

The relevant Term of Reference with the preceding statement of requirements is:

‘To examine and report on the robustness of the ETB’s responses to the issues raised in the C&AG Audit and the Department’s subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit’*

7.2 1 a) viii – Narrative

‘The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit’

Correspondence between the C and AG and the KWETB referenced a number of heating and boiler and plant maintenance contracts. The Investigator considered that two contracts dealing with a Summer Works Scheme and a Boiler and Plant Maintenance Contract should be considered under this heading.

The first contract considered was a contract for a summer works scheme. On 19th March, 2014, the Department approved an application by KWETB for boiler replacement works at School 1 as part of the Summer Works Scheme; the amount approved was 318,000 EUR to include VAT and fees. The works were to include a new gas fired heating plant and radiators and pipework throughout the school. Following approval, the KWETB invited applications for a Building Services Consulting Engineer in early April. A tender from Company 3 was accepted on 12th May, 2014.

On 16th June, 2014 a contract notice for the works was posted to the eTenders website with a response deadline of 24th June, 2014 – 5.5 working days. Only one company responded – Company 1, noted previously in this Report – whose tender was within the amount approved by the Department. A contract with Company 1 was signed on 18th July, 2014.

The Department’s technical guidance on small building projects, in operation at the time, notes that for projects of this value a minimum period of 15 days should be allowed for prospective tenderers to respond. An exception may be made in emergency cases.⁷ The schedule for the works, in respect of the 'Time for

⁷ Department of Education and Skills (2014) Technical Guidance Document TGD-007. Design Team Procedures for Small Works

Completion', notes a time requirement of '60 days starting from 14th July 2014. All works to be completed by the 22nd August 2014'. There are contradictions in this statement; 60 days would bring project completion to mid-September; the contract was signed on 18th July and not 14th July. A representative of Company 3 has confirmed that the inclusion within the 'Time for Completion' requirement of '60 days' was a mistake and that the critical date was the completion date – to allow for reopening of the school. Given that the works involved the replacement of piping and radiators in classrooms then completion by the last week in August was required. Thus, a shortened time for response to the tender request may have been justified but was suboptimal given the Department guidelines on tender processes. It is a fact that there was a tender response time of 5.5 days and the sole and successful tenderer was a company related to the CE through a family member.

The second contract was a drawdown contract for boiler and plant maintenance of KWETB schools, colleges and various education centres. The tender for this contract was issued in June 2015 and covered the 2015 to 2017 period. Company 3 assessed the eleven tenders that were submitted by the appointed date and time. Company 1 was deemed to have won the tender.

The Investigator has examined the material on file for this tender⁸. This material included the original tender submissions from the companies. Company 1 was awarded the highest marks possible in each category, except price. These categories included company structure, CVs for contract manager and service technician, marks for similar projects, transport fleet, technical equipment and after sales service. The Investigator, is not qualified to comment on technical matters such as similar projects, technical equipment and after sales service. However, other aspects of the material on file appear to indicate that full marks should not have been given in respect of CVs, as these were not present in the tender submission examined by the Investigator. Further, a pre-qualifying requirement for the tender was that the company should have three years of average annual manpower and management staff in the company including service technicians; according to the Companies Registration Office Company 1 was only established in 2014 and thus, on the basis of the documentation on file, could not have met the section criteria.

⁸ The consideration of this tender was restricted to a desk based review. Concerns arising from lacunae and inconsistencies in respect of Company 1 and Company 3 (see Term of Reference 1 a) iv) had been brought to the attention of An Garda Síochána in an earlier stage of the investigation. Accordingly, and because the same two companies were involved in this contract, the investigator restricted his analysis to a desk based review of available documents.

Recognising that the consideration of the tender was desk based and that further information may be available, the Investigator is of the opinion that the tender evaluation process appears flawed and that Company 1 could have been excluded from the process and, once allowed in, should not have received maximum marks in at least some of the categories.

7.3 1, a), viii – Finding

- **In respect of the summer works scheme contract, a shortened tender response of 5.5 days was suboptimal. The Investigator recognises the urgency of the works programme to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.**
- **In respect of the drawdown contract, the Investigator is of the opinion that the tender evaluation process appears flawed and that Company 1 could have been excluded from the process initially and, once allowed in, could not have received maximum marks in at least some of the categories.**

7.4 1, a), viii – Recommendations

- **In respect of the summer works scheme contract, reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used *in extremis*, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.**
- **Should the restriction on the drawdown contract element of the investigation be lifted, the Investigator recommends that Company 3 be requested to provide any and all documentation relating to this tender process to determine if CVs and financial information, not present in the files of the ETB, were present for the evaluation.**

8. Terms of Reference 1 a) ix and Matter Under Term of Reference 2 b)

8.1 Introduction

In respect of Term of Reference 1 a) ix, the preceding statement of requirements is:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit'*

8.2 1 a) ix – Narrative

'The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit'

On 1st July 2014 KWETB accepted a tender from Company 4 for the construction of a new school (School 2). A contract programme dated 12th May, 2014 was for a completion date of 23rd September, 2015. On 13th April, 2015 Company 4 proposed a new completion date of 31st August, 2015 but this was not requested by the Employer's Representative.

A letter dated June 2015, signed by the CE and addressed to the Employer's Representative (Person A) requesting activation of a plan with the contractor to ensure that partial completion was achieved to enable occupation of the building by the start of the school year, was made available to the Investigator. It should be noted that in correspondence with the Investigator, the Employer's Representative states that this letter was not received by him until December 2015. The reason for the difference between the date of the letter and the receipt by the Employer's Representative has not been established.

On 30th November, 2015 Company 4 submitted an acceleration claim. As part of the claim the Company asserts that a representative of the Company 'was met by the employer on site in May 2015 and was instructed to do what was necessary to ensure that the new school was opened safely for September 2015'. The CE did visit the site on several occasions between May and September, 2015 to check on progress, but not for formal site meetings.

Agreement on the costs of the project was made the subject of conciliation on 15th April 2016. The final agreed figure was 909,988 EUR of which 483,000 EUR was for costs arising from a requirement for early completion - 'in effect' an acceleration – according to the Conciliator's report. The Conciliator in his determination notes that 'In June 2015 the Employer⁹ issued a letter to [Company 4] confirming that the School Building must be complete and ready for occupation by 1st September 2015'. It is not clear whether the letter the Conciliator is referring to is the same letter as that dated June 2015 and addressed by the CE to the Employer's Representative. The CE denies writing directly to Company 4 in June 2015. Person A, likewise, did not issue a written instruction nor is there evidence to this Investigator of the question of acceleration arising at site meetings during this period. It seems likely, if Company 4's assertions about an on-site meeting are correct, that visits by the CE and discussion on site to check on progress resulted in an interpretation by the contractor as a request for completion for the opening of the School at the beginning of the School year and ultimately as an interpretation – by the Conciliator as - 'in effect' – an instruction for acceleration.

8.3 1 a), ix – Finding

- **A Conciliation hearing found that 'in effect' an acceleration request was issued. Person A denies issuing such an instruction as the Employer's Representative. The CE denies writing directly to Company 4. It is likely that the CE, at some form of on-site gathering in June 2015, requested that the school be ready for opening in September, 2015 and that this request was interpreted as a request for acceleration.**
- **The apparent direct involvement of the Employer, as represented here by the CE, particularly when the Employer's Representative appears to have been attempting to hold the contractor to the terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.**

8.4 1 a), ix – Recommendation

- **The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.**

8.5 2, b) – Narrative

The matter concerns the provision of a new school building for School 3 for which agreement on the final account is disputed.

⁹ This is understood to mean KWETB

At a meeting on the 27th September, 2016, the final account for the project was discussed. The CE asserts that it was necessary to hold the meeting because there had been a significant lapse in time post-completion of the contract. Following the meeting at which a member of the design team, but not the Employer's Representative (who was not invited – as confirmed by the ER to the Investigator) -, the CE of KWETB and representatives for the contractors, were present, the member of the design team present submitted a recommendation to the Employer's Representative for payment. The Employer's Representative wrote back disagreeing with the recommendation and noting their concerns. On 29th May, 2017 the CE wrote to the Employer's Representative requiring the issuance of a Penultimate Payment Certificate and, given the near-ending of the Defects Period, advising the full release of Retention. The Employer's Representative is refusing to release the certificate asserting that monies will not be paid for works not completed.

The Department's guidelines¹⁰ note that the Employer's Representative is responsible for issuing certificates for payment. The Guidelines do not provide for the Employer, in the absence of the Employer's Representative, agreeing a final account.

It will be noted that the intervention by the CE in the building project noted above (Term of Reference 2 b)) involved the same main building contractor as that in the project noted in Term of Reference 1 a), x in the following section.

8.6 2, b) – Finding

- **The CE attended a meeting at which the Employer's Representative was not present, and had not been invited, agreed a final account figure and, issued instructions to the Employer's Representative to issue the relevant certificates. Such actions subordinate the role of the Employer's Representative and run counter to the Department's guidelines. The direct involvement of the Employer, as represented here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.**

8.7 2, b) – Recommendation

- **The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.**

¹⁰ https://www.education.ie/en/School-Design/Procedures-and-Cost-Plans/pbu_DTP-2012_Construction_Stage4.doc

9. Terms of Reference 1 a), x

9.1 Introduction

The relevant Term of Reference with the preceding statement of requirements is:

‘To examine and report on the robustness of the ETB’s responses to the issues raised in the C&AG Audit and the Department’s subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *‘To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project’*

9.2 1 a), x – Narrative

‘To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project’

KWETB is the contracting authority for the building of School 1. In 2016 a dispute arose between the main contractor and some members of the design team. The Investigator is aware that this contract is the subject of ongoing disputes and that the project has proved problematic.

The CE asserts that, in an attempt to solve the problems on the contract, he procured, on an emergency basis, the services of Company 5 as represented by a specific individual; Person B. A letter of engagement issued by Company 5 was signed on 15th August, 2016 by the CE of KWETB and Person B on behalf of Company 5. The purpose of this contract was, according to the letter of engagement, to act as mediator/expert in the dispute. The CE signed on behalf of KWETB and Person B on behalf of Company 5. The total amount paid to Company 5 in respect of this contract was 9,787.75 EUR.

On 23rd January, 2017, in response to a request from the main contractor, KWETB instructed Company 5 to expand the scope of the work to include the assessment of Quantum. A contract to that effect was signed on the 23rd January 2017 by the CE of KWETB. The total amount paid by KWETB to Company 5 in respect of the expanded scope of work was 14,138.85 EUR.

The Procurement Guidelines for KWETB provide for urgent situations - under the heading ‘Single or Sole Source’ suppliers. Where it is intended to use the provision, the guidelines require that documentation on the approval process be held on file for audit purposes. No such documentation has been provided to the Investigator.

A matter of concern to the investigation is the issuing of a follow-up contract to expand the services provided by Company 5. The Procurement Guidelines, drawn from EU and Irish requirements, specifically prohibit entering into open-ended agreements that roll over. The Investigator is of the opinion that the signing of a second contract represents a roll-over. It has been confirmed to the Investigator, by members of the KWETB executive, that the ETB has requested that the process be terminated. However, Company 5 has informed the ETB that this can only be done if both parties agree; currently Company 5 are still making determinations on behalf of the main contractor. KWETB are currently seeking legal advice on extracting the Board from the contract.

During the course of the investigation it came to the attention of the Investigator that the determinations made by the representative of Company 5 have been the subject of dispute including allegations of bias in the determinations. The Employer's Representative wrote to the KWETB on 26th July, 2017 expressing concern over the status of Company 5 in the context of the contract governing the project and the independence of the representative of Company. The Investigator is not qualified to consider the technical aspects of the disputed determinations. However, it is a matter of concern that the appointment of a mediator directly by the CE of KWETB, in a manner that appears to this Investigator to be outside the agreed contract requirements for dispute resolution¹¹, undermines the authority of the Employer's Representative to act in the best interests of the Employer. It is not possible to determine what the long-term effect of this intervention will be because the project is not yet complete but it would appear likely that disputed determinations, particularly where those determinations have been made through an unagreed process, may lead to enhanced claims.

It will be noted that the intervention by the CE in the building project noted above involved the same main building contractor as that in the project noted in Term of Reference 2 b) in the previous section.

The CE, in the course of the response to the report, argues that they were obliged to intervene in the contract described here in section 9 and in the contracts described in section 8 because of concerns about the completion of the contracts. These concerns arose, because the CE claims, from difficulties in the contract process and dispute between the Employer's Representative and contractors. The Investigator understands how such concerns might arise but does not accept that interventions in the manner described are anything other than ill-conceived and thus are likely to lead to additional claims.

¹¹ <http://constructionprocurement.gov.ie/wp-content/uploads/PW-CF1-v2.2-09-01-17.pdf>

9.3 1 a), x – Findings

- The CE entered into a contract with Company 5 on the basis of urgency – no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, *defacto*, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the roll-over, the EU and Irish requirements. The arrangement with Company 5 appears to this Investigator to be outside the agreed contract process for dispute resolution. The determinations of the expert are contested.
- The engagement by the CE of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

9.4 1 a), x – Recommendations

- The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.
- The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the KWETB is the employer.

10. Summary of Findings and Recommendations

'Compliance with Department procedures in relation to the procurement and delivery of various building projects'

Findings

- Term of Reference 1 a) iv – There are several inconsistencies surrounding the procurement of the minor building works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.
- Term of Reference 1 a) viii – A contract for heating and plumbing services for a summer works scheme did not breach Department procurement requirements but the process was suboptimal. In respect of a tender for a drawdown contract, the tender evaluation process appears flawed.
- Term of Reference 1 a) ix – The acceleration ('in effect' - as found by a Conciliator) of a school building project was not in accord with Department contract management guidelines.
- Term of Reference 1 a) x – The procurement of a mediator by the CE for a school building project did not accord with procurement guidelines. The mediator's appointment did not appear to meet the contract requirements for dispute resolution.
- Term of Reference 2 b) – The intervention by the CE in the final account agreement process was not in accord with Department contract management guidelines.

'The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017'

Finding

- Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent procurement framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.

Recommendations

- The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to include their version control, promulgation and sign off by Board members and members of the Executive.
- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

'The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit'

Finding

- If adhered to, the procurement governance arrangements in place in 2015, 2016 and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.

Recommendation

- Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

'The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same'

Finding

- The Investigator finds several inconsistencies in the narrative noted above:-
 1. The CE has stated in correspondence and in an aide memoir that Company 1 was requested to make the property safe in return for a rent waiver. There is no contemporaneous documentary or oral confirmation from other than the CE, other than the Tender Report and documentation produced on the 19th December, 2017 that tendering took place.

2. In Section 4.7 the CE asserts that there was delegation of the procurement function from mid-2013. That being the case, it is not clear why other staff within the ETB were not aware of a tendering process in respect of this project at that time. It should also be noted that the COO maintains that procurement was not delegated to him.
3. The Tender Report is dated 15th December, 2015. The first invoice is dated 8th January, 2016. Given the intervening Christmas period this appears to be a very short period of time to allow response to the successful tenderer, for that contractor to mobilise on site and for the work to be undertaken.
4. The fact that an invoice for rent and utilities to cover a period of occupation prior to the date of the tender report was issued in July 2017 supports the CE's original assertion that Company 1 was requested to undertake remedial works in return for a rent waiver and was thus already in occupation of the building prior to the date of the tender report.
5. With the exception of the tender report and documentation received shortly before the deadline for response, there is no evidence that a tender process took place. The Investigator cannot make a finding as to the authenticity of the tender process disclosed at a very late stage in the investigation.
6. The CE, in an email, states that the work for the 19,100 EUR invoice noted above was tendered but the additional work was not.

Recommendation/Action

- In the absence of the establishment of the authenticity of the tender report and documentation, the Investigator cannot make a finding as to whether an acceptable procurement process for the remedial works took place. Determination of the authenticity of the tender report and documentation reconciliation of the inconsistencies requires investigative powers beyond the scope of this Investigation and the matter has been forwarded to the Garda National Economic Crime Bureau.

'The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use'

Findings

- There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned training activity.

Recommendation

- Notwithstanding the urgency of a requirement to establish education and training provision in any location, the Executive and Board members of the Kildare and

Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' are adhered to.

'The operation and use of pool vehicles and business case for same'.

Finding

- A business case for the use of car pool vehicles was provided to the Investigation. A vehicle log covering the period 2014 to the present is in existence.

Recommendation

- The business case for maintaining a collection of car pool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets standards required to ensure no BIK obligations accrue.

'The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB'.

Finding

- The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.

Recommendation

- The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at section 5 above, is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.

'The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit'

Finding

- In respect of a summer works scheme contract, a shortened tender response of 5.5 days was suboptimal. The Investigator recognises the urgency of the works programme to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.
- In respect of the drawdown contract, the Investigator is of the opinion that the tender evaluation appears flawed and that Company 1 could have been excluded from the

process initially and, once allowed in, could not have received maximum marks in at least some of the categories.

Recommendations

- In respect of the summer works scheme contract, reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used *in extremis*, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.
- Should the restriction on the drawdown contract element of the investigation be lifted, the Investigator recommends that Company 3 be requested to provide any and all documentation relating to this tender process to determine if CVs and financial information, not present in the files of the ETB, were present for the evaluation.

'The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit'

Finding

- A Conciliation hearing found that 'in effect' an acceleration request was issued. Person A denies issuing such an instruction as the Employer's Representative. The CE denies writing directly to Company 4. It is likely that the CE, at some form of on-site gathering in June 2015, requested that the school be ready for opening in September, 2015 and that this request was interpreted as a request for acceleration.
- The apparent direct involvement of the Employer, as represented here by the CE, particularly when the Employer's Representative appears to have been attempting to hold the contractor to the terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendation

- The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

The matter concerns the provision of a new school building for School 3 for which agreement on the final account is disputed.

Finding

- The CE attended a meeting at which the Employer's Representative was not present, and had not been invited, agreed a final account figure and, issued instructions to the Employer's Representative to issue the relevant certificates. Such actions subordinate the role of the Employer's Representative and run counter to the Department's guidelines. The direct involvement of the Employer, as represented

here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.

Recommendation

- The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

'To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project'

Findings

- The CE entered into a contract with Company 5 on the basis of urgency – no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, *de facto*, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the roll-over, the EU and Irish requirements. The arrangement with Company 5 appears to this Investigator to be outside the agreed contract process for dispute resolution. The determinations of the expert are contested.
- The engagement by the CE of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

- The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.
- The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the KWETB is the employer.

Appendix One

Section 40 of the Education and Training Board Act, 2013

Report on operation of education and training board.

40.— (1) Where the Minister is of the opinion that any of the functions of an education and training board are not being effectively discharged, the Minister may, having considered any representations made to him or her under subsection (3), appoint a person (in this section referred to as an “investigator”) to carry out an investigation into the performance by the board of its functions either generally or with reference to any particular function during such period as the Minister may determine.

(2) The Minister shall, by notice in writing, inform the education and training board concerned where he or she proposes to appoint an investigator under subsection (1).

(3) A notice under subsection (2) shall state that the education and training board may make representations to the Minister in relation to the proposed appointment not later than 14 days after the service of the notice on the board.

(4) An investigator shall be entitled at all reasonable times to enter any premises occupied by the education and training board concerned and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.

(5) An investigator shall on completion of his or her investigation prepare a draft report on the investigation.

(6) An investigator shall provide a copy of the draft report prepared under subsection (5) to the education and training board concerned and that board may, within one month from the provision of the report to it, make representations in writing to that investigator about that report.

(7) After consideration of any representations made to the investigator under subsection (6), that investigator may make any amendments to the draft report that he or she thinks appropriate.

(8) The investigator shall submit his or her final report to the Minister as soon as practicable after the report is completed.

(9) A chief executive and an education and training board shall supply such information regarding the performance of the board’s functions as—

(a) the Minister may from time to time require, and

(b) an investigator requires for the performance of his or her functions under this section.

Appendix Two

Terms of Reference

In the course of the Audit by the Comptroller & Auditor General of the Kildare & Wicklow ETB's financial statements for 2015 (which is ongoing) the C&AG brought a number of issues to the attention of the Department of Education and Skills. The Department corresponded with Kildare & Wicklow ETB and sought responses to the issues concerned.

Having considered the issues raised by the C&AG and the subsequent correspondence between the Department and the ETB, in exercise of his power under Section 40 of the ETB Act 2013 the Minister for Education and Skills has appointed an investigator to carry out an investigation into the performance by the board of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters and to submit a final report to the Minister as soon as practicable after the report is completed.

The terms of reference for this investigation are:

1. a) To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:
 - i. Compliance with Department procedures in relation to the procurement and delivery of various building projects
 - ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017
 - iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit
 - iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same
 - v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use
 - vi. The operation and use of pool vehicles and business case for same
 - vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB
 - viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit
 - ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit
 - x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.

- b) Where lacunae, inconsistencies or insufficient clarity are identified, to establish the factual position in relation to the matters in question in so far as it is reasonably practicable to do so.
- c) In the light of the above, to report and make recommendations as appropriate, in relation to the ETB's compliance with the relevant requirements regarding governance, procurement, ethics and Department policies and procedures.
2. The investigation may include:
- a) any other matter which was raised in the C&AG Audit or the Department's subsequent correspondence which, in the light of the ETB's response, the Investigator considers is a cause of concern or a matter of public interest, and
 - b) any other matter which, during the course of his/her investigation, comes to the attention of the Investigator and which the Investigator considers is a cause of concern or a matter of public interest. If the Investigator considers that it is not feasible or appropriate to deal with such matters within this investigation, s/he may bring such matters to the attention of the Minister.
3. The investigation may encompass examination of documents and matters which relate to periods before or after the year 2015, if deemed relevant by the Investigator.
4. The investigator shall be entitled at all reasonable times to enter any premises occupied by Kildare & Wicklow ETB and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.
5. Where appropriate, the Investigator will interview or consult with any relevant member of staff of the Board, member of the Board, or any other person, in relation to the matters identified. The Investigator may revert to any party if further clarification or information is required.
6. The investigator will have access to any persons with relevant specialist expertise, as required.
7. To ensure that it is effective, the investigation will proceed on the basis that confidentiality will be maintained during the investigation process.
8. Following his/her investigation, the Investigator will prepare a draft report and a final report in accordance with the provisions of Section 40 of the Act.
9. It is envisaged that the investigation will be completed in Quarter 1 2018.
10. The terms of reference may be subject to such addition or amendment as the Minister considers appropriate in the context of this investigation.

Appendix Three

KWETB Response to Section 40 Investigation Draft Report

Background

On the 4th of October 2017 the Minister for Education and Skills in exercise of powers under Section 40 of the ETB Act 2013, appointed Mr Richard Thorn to carry out an investigation into the performance by KWETB of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters. The Board committed to engaging fully with the Ministerial Investigator from the outset.

Over the subsequent weeks, KWETB through its Executive, provided the Investigator with all material requested and the Board met with the Investigator who provided insight as to how he proposed to conduct the Investigation. The Board notes the Investigator has acknowledged the cooperation received by him from KWETB.

During the course of the Investigation, the Chairperson and Vice Chairperson announced their resignations on the 30th of November 2017. The CE at the time of the appointment of the Investigator has retired as of the 31st of December of 2017.

On the 21st of December 2017, the Board appointed Noel Merrick as Chairperson and John McDonagh as Vice Chairperson and KWETB has a new acting CE Rory O'Toole.

On the 2nd of January 2018, members were sent copies of the Confidential Draft Report prepared by Richard Thorn.

The Board has held meetings to consider the said Report on the 9th, 22nd and 30th of January 2018.

Legislative Scheme

The Legislative provision governing this matter is contained in S.40 of the Education and Training Boards Act 2013 which provides -

40.— (1) Where the Minister is of the opinion that any of the functions of an education and training board are not being effectively discharged, the Minister may, having considered any representations made to him or her under subsection (3), appoint a person (in this section referred to as an “investigator”) to carry out an investigation into the performance by the board of its functions either generally or with reference to any particular function during such period as the Minister may determine.

(2) The Minister shall, by notice in writing, inform the education and training board concerned where he or she proposes to appoint an investigator under subsection (1).

(3) A notice under subsection (2) shall state that the education and training board may make representations to the Minister in relation to the proposed appointment not later than 14 days after the service of the notice on the board.

(4) An investigator shall be entitled at all reasonable times to enter any premises occupied by the education and training board concerned and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.

(5) An investigator shall on completion of his or her investigation prepare a draft report on the investigation.

(6) An investigator shall provide a copy of the draft report prepared under subsection (5) to the education and training board concerned and that board may, within one month from the provision of the report to it, make representations in writing to that investigator about that report.

(7) After consideration of any representations made to the investigator under subsection (6), that investigator may make any amendments to the draft report that he or she thinks appropriate.

(8) The investigator shall submit his or her final report to the Minister as soon as practicable after the report is completed.

(9) A chief executive and an education and training board shall supply such information regarding the performance of the board's functions as—

(a) The Minister may from time to time require, and

(b) An investigator requires for the performance of his or her functions under this section.

As provided for in S40 (6) the Board has resolved to make representations to the Investigator and this document is to be regarded as same.

The Investigator's Findings and Recommendations

The Board hereby formally records it has noted each of the Investigator's Findings and Recommendations.

The Board's Response

The Board has commenced a positive response to the Investigation. It is committed to providing effective governance and to be guided by –

1. Strong commitment to integrity and ethical values.
2. Comprehensive stakeholder engagement.
3. Determining the interventions necessary to optimise the achievement of intended outcomes.
4. Developing the capacity of KWETB, including the capability of its leadership and the individuals within it.
5. Managing risks and performance through robust internal control.
6. Implementing good practices in transparency and reporting to deliver effective accountability.

The Board in that regard sought the response of the Acting CE of KWETB on the S.40 draft Report and same is annexed to this document at Appendix 1 and should be read as part of the Board's formal response. The Board has sought and obtained detail in relation to the timeline for Actions thereunder and the Director or Officer responsible for oversight of delivery.

In addition the Board has resolved to implement the following actions to address matters raised in the draft Report.

1. The Board to review all approvals to date regarding the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings. This to comprise of a formal Register of same.
2. The Board shall direct the Executive to include all Licences in the Register mentioned at 1 above. For the purposes of clarity all licences being entered into by KWETB are to be placed before the Board for approval from this time forward.
3. The Board has resolved that "Conflict of Interest" will be item 2 on the agenda of all Board meetings.
4. The Board shall review the Codes of Conduct for members and staff forthwith.
5. The Board shall conduct a review of all procurement procedures within KWETB to ensure the transparency of same.
6. The Board is committed to full cooperation by it and all staff with any investigations which may be conducted by the Garda National Economic Crime Bureau.
7. The Board believes that an Ethics Registrar should be appointed by KWETB to oversee compliance with duties to oversee adherence to the Codes of Conducts which were issued to all members and employees, completion of Annual Declarations of Interests, and compliance with the law relating to ethics and standards in public office. The Board notes that the Act of 2013 does not put this role on a statutory footing in contrast with the legislative intervention by the Local Government Act of 2001 with regard to Local Authorities. The Board believes the Minister should give consideration to amending the Act to provide for this.
8. The management and reduction of risk is a governance matter of considerable importance to the Board. The Board, in the course of dealing with the matters herein became aware that issues pertaining to procurement within Kildare VEC were an issue in 2012 for the Comptroller and Auditor General. On its establishment under the 2013 Act, the Board of KWETB were not informed of this and believe that Board members and new Board members should have been briefed on same and should in the future be briefed on same if they are to be expected to discharge their duties of good governance. This should be addressed at Department level to provide a coherent national response. In the meantime the Board has agreed that "Risk" be an agenda item at each Board meeting.
9. The Board notes that the Investigator has recommended that certain matters be referred to the Garda National Economic Crime Bureau and the Board has been advised by a member that a Garda investigation has commenced with regard to matters pertaining to construction works at School 1. The Board would ask that the Department would disclose to the Board members all investigations that it is aware of into matters within the Board's jurisdiction.
10. The Board at paragraph 7 above has directed attention to what it sees as a lacuna in the legislation regarding Ethics. The Board is concerned that the 2013 Act should be reviewed in full as to whether amending legislation or Ministerial regulation would provide clarity in many areas. One fundamental absence in the Act is a lack of definition as to the meaning of "Board" throughout same. The Investigator and Department are directed to the fact that in the 2015 Code of Practice for Governance of Education and Training Boards it was felt necessary at page 5 to include a footnote stating "The term "Board" as used throughout this document refers to the entity comprising the elected and appointed members of the ETB". It is respectfully submitted that a matter of such importance for the interpretation of much that is in the Act should be contained within the Act and not merely be clarified in a footnote to a document issued two years after the legislation.

The Board believes that such legislative review should examine the quora requirements for the Board and its committees and resourcing in general.

11. The Board has received a response from the Chairman and Members of the Audit Committee of KWETB to page 11 para 4, and pages 11/12 section 4.5 of the Findings and Recommendations contained in the Report. Same is attached as Appendix 2 to this Response and was adopted by the Board as part of its response.

The Board wishes that it be noted that the Audit Committee was asked by the Internal Audit Unit to identify risk issues in 2016. By letter of the 10/02/16 the Committee made a submission requesting it to review the Risk Register, Contracts of Services and largescale Procurement especially in non-core areas such as land and building purchases and building works. The response from the IAU of the 7/3/16 was to reject these as areas of audit. The areas it decided to proceed with were none of those addressed by the Audit Committee. The areas requested have a striking similarity to those which are the subject of this S.40 Investigation. The Board believes that it is legitimate for the Department to examine that sequence of events and to in examine in particular the IAU response to requests by the Audit Committee for resources to examine these matters.

Again the Board believes that it is a flaw in the legislative scheme that the Executive are not given a fixed period of time within which to respond to the Audit Committee after that Committee had conducted an Internal Controls Review.

The Board believes that the criticism that the Audit Committee is “not fit for purpose” is not directed at the Audit Committee of KWETB solely but to the “Audit Committees” as provided for in the 2013 Act and the Board opines that the structure and functional parameters of same are flawed and require review.

12. The Board notes that the 2016 Accounts have not been brought before it for approval. The Board is committed to subjecting them to scrutiny with regards to issues raised in this Report.
13. The Board is committed to pursuing and scrutinising all matters of concern raised by the Comptroller and Auditor General and not referred to in this Report.
14. The Board is of the view that it is in the interests of all stakeholders in KWETB that this Report and Response be made public by the Minister as soon as possible.

Dated 1st day of February 2018

Noel Merrick

Chairperson of Kildare and Wicklow ETB

Appendix One

Acting Chief Executive's Response to the Chairperson of KWETB on the Section 40 Investigation Draft Report

Introduction

On behalf of the KWETB Executive, I am pleased to provide the following response on the Investigation Draft Report recently provided to the Board by Dr. Richard Thorn. This submission is intended to inform the Board's formal response to the Draft Report, due on 2 February 2018. As the draft report is confidential to the Board, this response is prepared in collaboration with the KWETB Directorate only.

The Draft Report outlines a number of findings and provides recommendations arising from those findings. This submission identifies key actions carried out to date by KWETB which will contribute to addressing the recommendations outlined in the report. The narrative and findings were also considered in the preparation of this response. In addition to actions completed to date, the submission identifies future and in-progress actions which will be required to ensure that KWETB conducts all activities to the highest standard. The actions and responses identified in this submission are focused on addressing shortcomings identified in the Draft Report and they are embedded in a framework of KWETB governance and improvement strategies.

While the findings of this Draft Report are clearly a matter of regret for our organisation, the recommendations align clearly with organisational, leadership, and change management processes that our senior management team are actively promoting and directing. The Draft Report identifies deficiencies in key practices, particularly around procurement and construction project management. I am satisfied to report at the outset that improvements in these areas will be achieved and it is heartening to read that the Investigator was of the view that the main components of a robust and transparent framework are in place in the KWETB.

This is a critical time for our organisation. The recent introduction of the leadership directorate for the ETB sector has provided the stimulus for a review of leadership approaches, organisational effectiveness, strategic direction, and corporate governance. On completion of the Phase 2 reconfiguration of the ETB sector, I hope that our organisation will be able to avail of improved structures and staffing levels. This workforce review of the ETB sector is in recognition of the dramatic changes in the scope of provision now under the remit of ETB's, including the very significant area of training.

An important element of the success of this action plan and indeed the wider improvement programme that is envisaged for KWETB is the effective relationship between the executive and non-executive branches of our organisation. In setting out this action plan, it is intended that non-executive members of our organisation will have a clear understanding of the roadmap to improvement that is currently in train and to invite observations on this approach. As part of the development of our Organisational Strategy, we will include a consultation phase with Members of the Board, Staff, Learners and Stakeholders in order to ensure that the organisation is effective and progressive.

I would also like to thank and acknowledge the commitment of staff to deliver on the improvements outlined in this response.

Summary

The Acting CE and Directorate have reviewed the draft report from Dr. Richard Thorn and current practices within KWETB and are responding to each of the recommendations in the form of an action plan with key deliverables, timelines, and outcomes to demonstrate our response to the findings. The Draft Report was made available to the Acting Chief Executive on 10 January 2018.

Details of key actions completed or planned are included in this submission. While some actions are identified as 'Complete', this should be interpreted as the completion of a key stage within a broader strategic response rather than the full achievement of a longer-term objective. Indicative time-frames for the completion of key actions are included. However, it is anticipated that these time-frames will be revised as the final recommendations of the report emerge and the wider Senior Management Team of KWETB engage with these proposals.

The general indicators of progress for each action are estimates and are described as follows:

0%	(Action Not Yet Commenced)
0% to 30%	(Action Commenced) Action at Early Stage of Commencement
30% to 60%	(Action in Progress) Action Substantially Commenced
60% to 90%	(Action in Progress) Action Entering Completion Stages
100%	(Action Complete)

The key actions identified include:

- KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures in respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB.
- KWETB is in negotiation with the Institute of Public Administration (IPA) to explore the suitability of the Institute to contribute to the organisational development programme in train.
- A review of existing procurement policies and procedures has been conducted.
- Workshops with Finance and Procurement teams were established to identify issues, clarify expectations and identify actions to enhance existing practices.
- A procurement plan for OGP Frameworks for 2018-2020 was prepared.
- Formal training in Public Procurement Systems and Practices for the Procurement Team was undertaken, including team members attending Certificate in Public Procurement Programme
- Actions to promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy are in train.
- A memorandum of clarification has been issued to all staff with a role in procurement to emphasise that practices on sales proceeds referred to in the report are inconsistent with the KWETB Procurement Policy.
- KWETB is currently reviewing the operation of a carpool with a view to the review or termination of this practice.
- Actions to identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team are in train.
- A plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior Managers, Principals, FET Coordinators, OSD Managers and staff in general is in development. This will entail carrying out a procurement training needs analysis.

- The objective to review and optimise Asset Management Systems across KWETB is emphasised.
- An audit of current building projects is complete to confirm that no instructions to accelerate construction projects are in effect.
- KWETB confirms that the role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer.
- KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts.
- KWETB confirms that the Procurement Policy of the KWETB is based on national and EU requirements.
- The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal controls.

Terms of Reference 1 a) To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

1.1 Terms of Reference 1 a) i. Compliance with Department procedures in relation to the procurement and delivery of various building projects

1.2 Terms of Reference 1 a) ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017

Findings

Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.

Recommendations

- The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to include their version control, promulgation and sign-off by Board members and members of the Executive.
- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and adjust as required.

Response

Actions Completed	Due Date	Progress	Owner
KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures with respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB	22/12/2017	100% (Action Complete)	Director OSD
Actions in Progress	Due Date	Progress	
KWETB is engaged with an external expert agency (Irish Public Administration) to determine their suitability to compliment the work of IPB with respect to enhancement in Corporate Governance	30/01/2018	50% (Action in Progress)	Director OSD
Actions Not Yet Commenced	Due Date	Progress	
Active engagement with external expert agency or agencies to develop	30/03/2018	10% (Action Commenced)	Director OSD

a strategy for a comprehensive review of Corporate Governance structures at KWETB and to address any gaps identified			
--	--	--	--

1.3 Terms of Reference 1 a) iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit

Findings

If adhered to, the procurement governance arrangements in place in 2015, 2016, and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.

Recommendations

Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.

Response

Actions Completed	Due Date	Progress	
Internal review of existing procurement policies and procedures	29/09/2017	100% (Action Complete)	Director OSD
Workshop with Finance and Procurement team to identify issues, clarify expectations and identify actions to enhance existing practices	29/09/2017	100% (Action Complete)	Director OSD
Create a KWETB procurement plan compliant with OGP Frameworks for 2018-2020	29/12/2017	100% (Action Complete)	Director OSD
Formal training in Public Procurement Systems and Practices for the Procurement Team including team members attending Certificate in Public Procurement Programme	29/12/2017	100% (Action Complete)	Director OSD
KWETB representation on national ETBI procurement networking forum for best practice	29/09/2017	100% (Action Complete)	Director OSD
Actions in Progress	Due Date	Progress	
Promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy	28/12/2018	100% (Action Complete)	Director OSD
Carry out a comprehensive procurement training needs analysis to identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team	28/12/2018	75% (Action in Progress)	Director OSD
Implement plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior	28/09/2018	10% (Action Commenced)	Director OSD

Managers, Principals, FET Coordinators, OSD Managers and staff in general			
Review KWETB staffing levels and roles and responsibilities as part of ongoing Workforce Planning	29/06/2018	10% (Action in Commenced)	Director OSD
Introduce best-practice document management and policy approval practices and conventions including revision dates, by whom, promulgation, changes, distribution etc.	29/06/2018	75% (Action in Progress)	Director OSD
Actions Not Yet Commenced	Due Date	Progress	
Develop an organisational chart and related policies clearly identifying areas of delegated responsibility with respect to procurement and other key decision-making functions, with these arrangements to be brought to the Board	30/03/2018	10% (Action Commenced)	Director OSD
With the support of an external expert agency, review protocols to ensure conflicts of interest do not influence procurement matters.	30/03/2018	20% (Action Commenced)	Director OSD

1.4 Terms of Reference 1 a) iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same

Findings

There are several inconsistencies surrounding the procurement of the minor works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.

With the exception of the tender report, but no backup documentation, there is no evidence that a tender process took place. Further, with the exception of the tender report, the evidence suggests the absence of a tender process.

Recommendations

No recommendations identified

Response

Actions Completed	Due Date	Progress	Owner
KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures with respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB	22/12/2017	100% (Action Complete)	Director OSD

1.5 Terms of Reference 1 a) v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use

Findings

There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned activity.

Recommendations

Notwithstanding the urgency of a requirement to establish education and training in any location, the Executive and Board members of the Kildare and Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' are adhered to.

Response

Actions in Progress	Due Date	Progress	Owner
KWETB will ensure that the requirements of the Code of Practice for the Governance of ETB's in respect of the Board approval for 'the acquisition, development and disposal of land or any interests in land including buildings' are adhered to and recorded appropriately in Board minutes	30/03/2018	50% (Action in Progress)	Director OSD

1.6 Terms of Reference 1 a) vi. The operation and use of pool vehicles and business case for same

Findings

The business case for the use of carpool vehicles was provided to the investigation. A vehicle log covering the period 2014 to the present is in existence.

Recommendations

The business case for maintaining a collection of carpool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets the standards required to ensure no BIK obligations accrue.

Response

Actions in Progress	Due Date	Progress	Owner
KWETB is currently reviewing the operation of a carpool with a view to the review or termination of this practice	30/03/2018	50% (Action in Progress)	Director OSD

1.7 Terms of Reference 1 a) vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB

Findings

The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.

Recommendations

The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at Section 5 [above], is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.

Response

Actions Completed	Due Date	Progress	Owner
A memorandum of clarification has been issued to all staff with a role in procurement to emphasise that the practices on sales proceeds referred to in the recommendation are inconsistent with the KWETB Procurement Policy	16/01/2018	100% (Action Complete)	Director OSD

1.8 Terms of Reference 1 a) viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit

Findings

A contract for heating and plumbing services did not breach Department procurement requirements but the process was suboptimal

A shortened tender response of 5.5 days was suboptimal. The investigator recognises the urgency of the works program to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.

Recommendations

Reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used in extremis, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.

Response

Actions Completed	Due Date	Progress	Owner
Internal review of existing procurement policies and procedures	29/09/2017	100% (Action Complete)	Director OSD
Workshop with Finance and Procurement team to identify issues, clarify expectations and identify actions to enhance existing practices	29/09/2017	100% (Action Complete)	Director OSD
Create a KWETB procurement plan compliant with OGP Frameworks for 2018-2020	29/12/2017	100% (Action Complete)	Director OSD
Formal training in Public Procurement Systems and Practices for the Procurement	29/12/2017	100% (Action Complete)	Director OSD

Team including three team members attending Certificate in Public Procurement Programme			
KWETB representation on national ETBI procurement networking forum for best practice	29/09/2017	100% (Action Complete)	Director OSD
Actions in Progress	Due Date	Progress	
Promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy	28/12/2018	100% (Action Complete)	Director OSD
Identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team	28/12/2018	50% (Action in Progress)	Director OSD
Implement plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior Managers, Principals, FET Coordinators, OSD Managers and staff in general	28/09/2018	10% (Action Commenced)	Director OSD
Review KWETB staffing levels and roles and responsibilities as part of ongoing Workforce Planning	29/06/2018	10% (Action in Commenced)	Director OSD
Review and optimise Asset Management Systems across KWETB	29/06/2018	25% (Action in Progress)	Director OSD
Actions Not Yet Commenced	Due Date	Progress	
With the support of an external expert agency, review protocols to ensure conflicts of interest do not influence procurement matters, that systems of internal control are fit for purpose, and ensure compliance with relevant regulations	29/06/2018	25% (Action in Progress)	Director OSD
Clarify roles, responsibility and authority with respect to procurement processes and systems of internal control	29/06/2018	Action Not Yet Commenced	Director OSD

1.9 Terms of Reference 1 a) ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit

Findings

A Conciliation hearing found that 'in effect' an acceleration request was issued. Person A denies issuing such an instruction as the Employer's Representative. The CE denies writing directly to Company 4. It is likely that the CE at some form of on-site gathering in June 2015 requested that the school be ready for opening in September 2015 and that this request was interpreted as a request for acceleration.

The apparent direct involvement of the employer, as represented here by the CE, particularly when the Employer's Representative appears to have been attempting to hold the contractor to terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

Response

Actions Completed	Due Date	Progress	Owner
Conduct an audit of current building projects to confirm that no instructions to accelerate construction projects are in effect	16/01/2018	100% (Action Complete)	Acting CE
The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer.	01/12/2017	100% (Action Complete)	Acting CE
KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts	01/01/2018	100% (Action Complete)	Acting CE
Actions in Progress	Due Date	Progress	
With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects	29/06/2018	25% (Action in Progress)	Director OSD

1.10 Terms of Reference 1 a) x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.

Findings

The CE entered into a contract with Company 5 on the basis of urgency - no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, de facto, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the rollover, the EU and Irish requirements. The arrangement with Company 5 appears to this investigator to be outside the agreed contract process dispute resolution. The determinations of the expert are contested.

The engagement by the CEO of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.

The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the is the employer.

Response

Actions Completed	Due Date	Progress	Owner
The role of the Employer's Representative, as established in construction practice in various	01/01/2018	Progress: 100% (Action Complete)	Acting CE

guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer.			
KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts	01/01/2018	100% (Action Complete)	Acting CE
That the Procurement Policy of the KWETB is based on national and EU requirements is confirmed	16/01/2018	100% (Action Complete)	Director OSD
Actions in Progress	Due Date	Progress	
With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects	29/06/2018	25% (Action in Progress)	Director OSD
The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal control	29/06/2018	50% (Action in Progress)	Director OSD

1.11 Terms of Reference 2 b) The investigation may include: any other matter which, during the course of his/her investigation, comes to the attention of the Investigator and which the Investigator considers is a cause of concern or a matter of public interest. If the Investigator considers that it is not feasible or appropriate to deal with such matters within this investigation, s/he may bring such matters to the attention of the Minister.

Findings

The CE attended a meeting at which the Employer's Representative was not present, and had not been invited, agreed a final account figure and issued instructions to the Employer's Representative to issue the relevant certificates. Such actions subordinate the role of the Employer's Representative and run counter to the Department's guidelines. The direct involvement of the employer, as represented here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

Response

Actions Completed	Due Date	Progress	Owner
The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer	01/01/2018	Progress: 100% (Action Complete)	Acting CE
KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts	01/01/2018	100% (Action Complete)	Acting CE
KWETB confirms that the Procurement Policy of the KWETB is based on national and EU requirements	01/12/2017	100% (Action Complete)	Director OSD

Actions in Progress	Due Date	Progress	
The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal control.	29/06/2018	50% (Action in Progress)	Director OSD
With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects	29/06/2018	25% (Action in Progress)	Director OSD

Terms of Reference for Which No Recommendations Were Identified

- 1.12 Terms of Reference 1 b) Where lacunae, inconsistencies or insufficient clarity are identified, to establish the factual position in relation to the matters in question in so far as it is reasonably practicable to do so.**

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

- 1.13 Terms of Reference 1 c) In the light of the above, to report and make recommendations as appropriate, in relation to the ETB's compliance with the relevant requirements regarding governance, procurement, ethics and Department policies and procedures.**

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

- 1.14 Terms of Reference 2 a) The investigation may include: any other matter which was raised in the C&AG Audit or the Department's subsequent correspondence which, in the light of the ETB's response, the Investigator considers is a cause of concern or a matter of public interest**

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

Appendix Two

Response of the Chairman and Members of the Audit Committee of the KWETB to page 11 para. 4, and pages 11/ 12, section 4.5 – Findings & Recommendations, of the Thorn Report.

- The observations and findings outlined by Dr. Thorn on page 11 para. 4, and (4.5 1a1), are endorsed by the Audit Committee, as the issues highlighted do impact currently on the effective workings and role of the Audit Committee.
- The Audit Committee welcomes the recommendation on page 12 (4.5 1a2) that ***‘The Board of the KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required’***
- The Audit Committee will engage with, and support, the external experts when appointed, to review, renew and craft the necessary processes and procedures, to ensure an effective new role and function for the KWETB Audit Committee going forward.

Investigation into Certain Matters in Kildare and Wicklow Education and Training Board

- In developing a revised role and function for the Audit Committee, the expert review exercise must consider;
 - the influences and impacts of the role of the Internal Audit Unit of the ETBs,
 - the existing guidelines for the funding and resourcing of the Audit Committee of the KWETB,
 - that the Chair and or representatives to the Audit Committee be invited to present their work progress to the Board at least once a year and invite the Board in turn to communicate their experience and concerns directly to the Audit committee,
 - the guidelines for Audit Committees as outlined in Section 45.(1) of the Education and Training Boards Act 2013.

Dr. Tony Ienehan,
Chairman—Audit Committee KWETB.

22/01/2018

Annex C

Ministerial Direction to Kildare and Wicklow Education and Training Board



Oifig an Aire Oideachais agus Scileanna
Office of the Minister for Education and Skills

Mr Noel Merrick

Chairperson

Kildare and Wicklow Education and Training Board

Devoy Park

Áras Chill Dara

Naas West

Naas

Co. Kildare

24th
October 2018

Kildare and Wicklow Education and Training Board
Report Prepared Under Section 40 of the Education and Training Board Act 2013

Dear Mr Merrick,

I refer to my letter to you of 12th September 2018 which set out my opinion and proposed direction to Kildare and Wicklow Education and Training Board (KWETB) under Section 41 (1) of the Education and Training Boards Act 2013.

I have received, and welcome the contents of, the representation made by the Board of KWETB in your response of 21st September 2018

I now wish to confirm that my direction to KWETB under Section 41 (3) of the Act is as follows:

- To review the actions set out in Appendix Three to the Section 40 report in the light of receipt of the final report and the findings and recommendations contained therein.
- To implement a final action plan arising from the review above. The action plan should be agreed with my Department before finalisation.
- To review the measures which are in place in the ETB to prevent conflicts of interest and inappropriate interventions in processes, which may be contrary to Public Procurement Procedures/internal controls in relation to procurement, contract and project management in particular. This review is to include circumstances where emergency situations arise with school or other buildings.
- To ensure that mandatory governance training is provided to new and existing board members;

- To conduct a Board self-evaluation, with appropriately qualified external input, to ensure that the Board is operating effectively and has appropriate procedures in place, including in relation to the management of conflicts of interest and oversight of the executive which is accountable to the Board for the carrying out of executive functions.
- To provide a comprehensive update to the Department on the above matters within three months and quarterly thereafter until notified otherwise.
- To engage with my Department as required in the context of the response of the ETB to the report and any other matters related to the report or to governance and oversight arrangements in the ETB.
- To ensure that any obligations to report to relevant statutory agencies in relation to the matters raised in the report (such as, but not limited to, An Garda Síochána, the Comptroller and Auditor General, the Charities Regulator, Standards in Public Office Commission) are addressed.

Section 41 (4) obliges the Board and Chief Executive to comply with the above direction. The ETB should make contact with my officials to agree the format of engagement between it and the Department in relation to the implementation of the above measures.

Yours sincerely,



Richard Bruton TD

Minister for Education and Skills

c.c. Dr. Deirdre Keyes, Chief Executive, Kildare and Wicklow Education and Training Board